

# ARKANSAS CODE OF 1987 ANNOTATED



## 2013 SUPPLEMENT VOLUME 23A

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# **TITLE 23**

## **PUBLIC UTILITIES AND REGULATED INDUSTRIES**

(CHAPTERS 1-29 IN VOLUME 22; CHAPTERS 60-73 IN VOLUME 23B; CHAPTERS 74-87 IN VOLUME 24A; CHAPTERS 88-115 IN VOLUME 24B)

### *SUBTITLE 2. FINANCIAL INSTITUTIONS AND SECURITIES*

#### CHAPTER.

- 37. SAVINGS AND LOAN ASSOCIATIONS.
- 38. BUILDING AND LOAN ASSOCIATIONS — MISCELLANEOUS PROVISIONS.  
[REPEALED.]
- 39. MORTGAGE LOAN COMPANIES AND LOAN BROKERS.
- 40. ARKANSAS PREPAID FUNERAL BENEFITS LAW.
- 42. ARKANSAS SECURITIES ACT.
- 48. ORGANIZATION AND OPERATION.
- 55. UNIFORM MONEY SERVICES ACT.

### ***SUBTITLE 2. FINANCIAL INSTITUTIONS AND SECURITIES***

#### **CHAPTER 37**

#### **SAVINGS AND LOAN ASSOCIATIONS**

#### SUBCHAPTER.

##### 2. SUPERVISION.

#### **SUBCHAPTER 2 — SUPERVISION**

#### SECTION.

- 23-37-208. Supervisor's investigatory powers.

#### **23-37-208. Supervisor's investigatory powers.**

(a) For the purpose of any investigation, examination, inquiry, or proceeding under this chapter, the Supervisor of Savings and Loan Associations or any officer designated by the supervisor may administer oaths and affirmations, subpoena witnesses or documents, compel their attendance, take evidence, and require the production of any books, papers or correspondence, memoranda, agreements, or other documents which the supervisor deems relevant or material to the inquiry or examination.

(b) In case of contumacy or refusal to obey a subpoena issued to any person, the Pulaski County Circuit Court, upon application by the

supervisor, may issue to the person an order requiring him or her to appear before the supervisor or the officer designated by him or her, there to produce documentary evidence if so ordered or to give evidence concerning the examination, investigation, or inquiry. Failure to obey the order of the court may be punished by the court as a contempt of court.

**History.** Acts 1963, No. 227, § 49; 1979, No. 361, § 9; A.S.A. 1947, § 67-1849; Acts 2013, No. 1144, § 3. deleted “or the Building and Loan Association Act, § 23-38-101 et seq.” following “under this chapter” in (a).  
**Amendments.** The 2013 amendment

CHAPTER 38  
BUILDING AND LOAN ASSOCIATIONS —  
MISCELLANEOUS PROVISIONS

SUBCHAPTER.

- 1. GENERAL PROVISIONS. [REPEALED.]
- 2. ORGANIZATION AND OPERATION. [REPEALED.]
- 3. LIQUIDATION. [REPEALED.]
- 4. PROHIBITED PRACTICES. [REPEALED.]

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

23-38-101, 23-38-102. [Repealed.]

23-38-101, 23-38-102. [Repealed.]

**Publisher’s Notes.** This subchapter was repealed by Acts 2013, No. 1144, § 4. The subchapter was derived from the following sources:

23-38-101. Acts 1929, No. 128, § 4a, as added by Acts 1931, No. 236, § 1; 1929, No. 128, §§ 5-7; 1931, No. 236, §§ 2, 3;

Pope’s Dig., §§ 979-982; A.S.A. 1947, §§ 67-801 — 67-804.

23-38-102. Acts 1929, No. 128, §§ 28, 29; 1931, No. 236, § 13; Pope’s Dig., §§ 1005, 1006; A.S.A. 1947, §§ 67-842, 67-843; Acts 2005, No. 1994, § 150.

SUBCHAPTER 2 — ORGANIZATION AND OPERATION

SECTION.

23-38-201 — 23-38-220. [Repealed.]

23-38-201 — 23-38-220. [Repealed.]

**Publisher’s Notes.** This subchapter was repealed by Acts 2013, No. 1144, § 4. The subchapter was derived from the following sources:

23-38-201. Acts 1929, No. 128, § 13; Pope’s Dig., § 989; A.S.A. 1947, § 67-816.  
23-38-202. Acts 1929, No. 128, § 15;

Pope’s Dig., § 991; A.S.A. 1947, § 67-822.

23-38-203. Acts 1929, No. 128, § 9; Pope’s Dig., § 984; A.S.A. 1947, § 67-819.

23-38-204. Acts 1929, No. 128, § 8; Pope’s Dig., § 983; A.S.A. 1947, § 67-818.

23-38-205. Acts 1929, No. 128, § 19; 1931, No. 236, § 10; Pope’s Dig., § 995;



A.S.A. 1947, § 67-811.

23-38-206. Acts 1929, No. 128, § 14; Pope's Dig., § 990; A.S.A. 1947, § 67-817.

23-38-207. Acts 1929, No. 128, § 27a, as added by Acts 1931, No. 236, § 12; Pope's Dig., § 1004; A.S.A. 1947, § 67-814.

23-38-208. Acts 1933, No. 54, § 2; Pope's Dig., § 1036; A.S.A. 1947, § 67-825.

23-38-209. Acts 1929, No. 128, § 44, as added by Acts 1931, No. 236, § 17; Pope's Dig., § 1021; A.S.A. 1947, § 67-826.

23-38-210. Acts 1929, No. 128, § 11; 1931, No. 60, § 1; 1935, No. 40, § 1; Pope's Dig., § 985; Acts 1939, No. 343, § 2; 1955, No. 149, § 2; A.S.A. 1947, § 67-830.

23-38-211. Acts 1929, No. 128, § 11a, as added by Acts 1931, No. 236, § 6; Pope's Dig., § 986; Acts 1955, No. 149, § 3; 1961, No. 73, § 4; A.S.A. 1947, § 67-831.

23-38-212. Acts 1929, No. 128, § 37; Pope's Dig., § 1015; A.S.A. 1947, § 67-833.

23-38-213. Acts 1929, No. 128, § 33; Pope's Dig., § 1010; A.S.A. 1947, § 67-834.

23-38-214. Acts 1929, No. 128, § 34; 1931, No. 236, § 14; Pope's Dig., § 1011; A.S.A. 1947, § 67-835.

23-38-215. Acts 1933, No. 54, § 4; Pope's Dig., § 1038; A.S.A. 1947, § 67-838.

23-38-216. Acts 1929, No. 128, § 40; Pope's Dig., § 1018; Acts 1939, No. 169, § 1; A.S.A. 1947, § 67-836.

23-38-217. Acts 1929, No. 128, § 34a, as added by Acts 1931, No. 236, § 15; Pope's Dig., § 1012; A.S.A. 1947, § 67-837.

23-38-218. Acts 1935, No. 128, § 5; Pope's Dig., § 1043; A.S.A. 1947, § 67-847.

23-38-219. Acts 1932 (2nd Ex. Sess.), No. 11, § 1; Pope's Dig., § 1028; A.S.A. 1947, § 67-839.

23-38-220. Acts 1929, No. 128, § 32; Pope's Dig., § 1009; A.S.A. 1947, § 67-863.

## SUBCHAPTER 3 — LIQUIDATION

### SECTION.

23-38-301 — 23-38-307. [Repealed.]

## 23-38-301 — 23-38-307. [Repealed.]

**Publisher's Notes.** This subchapter was repealed by Acts 2013, No. 1144, § 4. The subchapter was derived from the following sources:

23-38-301. Acts 1933, No. 54, § 1; Pope's Dig., § 1035; A.S.A. 1947, § 67-848.

23-38-302. Acts 1929, No. 128, § 23; Pope's Dig., § 999; A.S.A. 1947, § 67-849.

23-38-303. Acts 1929, No. 128, § 24; 1931, No. 236, § 11; Pope's Dig., § 1000; Acts 1985, No. 1043, § 1; A.S.A. 1947, § 67-850.

23-38-304. Acts 1929, No. 128, § 24;

1931, No. 236, § 11; Pope's Dig., § 1000; Acts 1985, No. 1043, § 1; A.S.A. 1947, § 67-850.

23-38-305. Acts 1932 (2nd Ex. Sess.), No. 10, §§ 1-4, 6; Pope's Dig., §§ 1029-1032, 1034; A.S.A. 1947, §§ 67-851 — 67-854, 67-856.

23-38-306. Acts 1932 (2nd Ex. Sess.), No. 10, § 5; Pope's Dig., § 1033; A.S.A. 1947, § 67-855.

23-38-307. Acts 1929, No. 128, § 11c, as added by Acts 1931, No. 236, § 7; Pope's Dig., § 987; A.S.A. 1947, § 67-832.

## SUBCHAPTER 4 — PROHIBITED PRACTICES

### SECTION.

23-38-401 — 23-38-404. [Repealed.]

**23-38-401 — 23-38-404. [Repealed.]**

**Publisher's Notes.** This subchapter was repealed by Acts 2013, No. 1144, § 4. The subchapter was derived from the following sources:

23-38-401. Acts 1929, No. 128, § 43, as added by Acts 1931, No. 236, § 16; Pope's Dig., § 1020; A.S.A. 1947, § 67-864.

23-38-402. Acts 1929, No. 128, § 31; Pope's Dig., § 1008; A.S.A. 1947, § 67-865; Acts 2005, No. 1994, § 151.

23-38-403. Acts 1929, No. 128, § 45, as added by Acts 1931, No. 236, § 18; Pope's Dig., § 1022; A.S.A. 1947, § 67-866; Acts 2005, No. 1994, § 434.

23-38-404. Acts 1929, No. 128, § 30; Pope's Dig., § 1007; A.S.A. 1947, § 67-867; Acts 2005, No. 1994, § 445.

**CHAPTER 39****MORTGAGE LOAN COMPANIES AND LOAN BROKERS****SUBCHAPTER.****5. FAIR MORTGAGE LENDING ACT.****SUBCHAPTER 5 — FAIR MORTGAGE LENDING ACT****SECTION.**

23-39-502. Definitions.

23-39-513. Prohibited activities.

**SECTION.**

23-39-514. Disciplinary authority.

**23-39-502. Definitions.**

As used in this subchapter:

(1) "Applicant" means a person who has applied to become licensed under this subchapter as a loan officer, mortgage broker, mortgage banker, or mortgage servicer;

(2) "Branch manager" means the individual who is in charge of the business operations of one (1) or more branch offices of a mortgage broker, mortgage banker, or mortgage servicer;

(3) "Branch office" means a location that is separate and distinct from the licensee's principal place of business and includes a net branch or any location from which business is conducted under the license or in the name of the mortgage broker, mortgage banker, or mortgage servicer:

(A) The address of which appears on business cards, stationery, or advertising used by the licensee in connection with business conducted under this subchapter at the branch office;

(B) At which the licensee's name, advertising, promotional materials, or signage suggests that mortgage loans are originated, solicited, accepted, negotiated, funded, or serviced or from which mortgage loan commitments or interest rate guarantee agreements are issued; or

(C) Which, due to the actions of any employee, associate, or loan officer of the licensee, may be construed by the public as a branch office of the licensee where mortgage loans are originated, solicited,

accepted, negotiated, funded, or serviced or from which mortgage loan commitments or interest rate guarantee agreements are issued;

(4) "Commissioner" means the Securities Commissioner and includes the commissioner's designees;

(5)(A) "Control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise.

(B) A person is presumed to control a company if the person:

(i) Is a director, general partner, or executive officer of the company;

(ii) Directly or indirectly has the right to vote ten percent (10%) or more of a class of a voting security of the company or has the power to sell or direct the sale of ten percent (10%) or more of a class of voting securities of the company;

(iii) In the case of a limited liability company, is a managing member of the limited liability company; or

(iv) In the case of a partnership, has the right to receive upon dissolution or has contributed ten percent (10%) or more of the capital of the partnership;

(6) "Control affiliate" means a partnership, corporation, trust, limited liability company, or other organization that directly or indirectly controls or is controlled by the applicant;

(7) "Control person" means an individual who directly or indirectly exercises control over the applicant;

(8) "Employee" means an individual who is licensed with or employed by a mortgage broker, mortgage banker, or mortgage servicer, whether by employment contract, agency, or other arrangement and regardless of whether the individual is treated as an employee for purposes of compliance with the federal income tax laws;

(9)(A) "Exempt person" means a person not required to be licensed as a mortgage broker, mortgage banker, mortgage servicer, or loan officer under this subchapter.

(B) "Exempt person" includes any of the following:

(i) An employee of a licensee whose responsibilities are limited to clerical and administrative tasks for his or her employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer;

(ii) An agency or corporate instrumentality of the federal government or any state, county, or municipal government granting mortgage loans under specific authority of the laws of any state or of the United States;

(iii) A trust company or industrial loan company chartered under the laws of Arkansas;

(iv) A small-business investment corporation licensed under the Small Business Investment Act of 1958, 15 U.S.C. § 661 et seq., as it existed on January 1, 2011;

(v) A real estate investment trust as defined in 26 U.S.C. § 856, as it existed on January 1, 2011;



(vi) A state or federally chartered bank, an operating subsidiary of a state-chartered bank regulated by the State Bank Department, a savings bank, a savings and loan association, or a credit union, the accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration;

(vii) An agricultural loan organization that is subject to licensing, supervision, or auditing by the Farm Service Agency, Commodity Credit Corporation, Rural Development Housing & Community Facilities Programs, Farm Credit Administration, or the United States Department of Agriculture;

(viii) A nonprofit corporation that:

(a) Qualifies as a nonprofit entity under § 501(c)(3) of the Internal Revenue Code;

(b) Is not primarily in the business of soliciting or brokering mortgage loans; and

(c) Makes or services mortgage loans to promote home ownership or home improvements for the disadvantaged;

(ix)(a) A licensed real estate agent or broker who is performing those activities subject to the regulation of the Arkansas Real Estate Commission.

(b) Notwithstanding subdivision (9)(B)(ix)(a) of this section, "exempt person" does not include a real estate agent or broker who receives compensation of any kind in connection with the referral, placement, or origination of a mortgage loan;

(x) A person who engages in seller-financed transactions or who as a seller of real property receives mortgages, deeds of trust, or other security instruments on real estate as security for a purchase money obligation if:

(a) The person does not receive from or hold on behalf of the borrower any funds for the payment of insurance or taxes on the real property; and

(b) The seller does not sell the liens or mortgages in the secondary market other than to affiliated or subsidiary persons;

(xi) An individual or husband and wife who provide funds for investment in loans secured by a lien on real property on his or her or their own account and who do not:

(a) Charge a fee or cause a fee to be paid for any service other than the normal and scheduled rates for escrow, title insurance, and recording services; and

(b) Collect funds to be used for the payment of any taxes or insurance premiums on the property securing the loans;

(xii) An attorney licensed in Arkansas rendering legal services to his or her client, when the conduct that would subject the attorney to the jurisdiction of this subchapter is ancillary to the provision of the legal services offered;

(xiii) A person performing any act under order of any court;

(xiv) A person acting as a mortgage broker, mortgage banker, or mortgage servicer for any person located in Arkansas, if the mortgage



broker, mortgage banker, or mortgage servicer has no office or employee in Arkansas and the real property that is the subject of the mortgage is located outside of Arkansas;

(xv) An officer or employee of an exempt person described in subdivisions (9)(B)(ii)-(xiv) of this section if acting in the scope of employment for the exempt person; and

(xvi) A manufactured home retailer and its employees if performing only administrative or clerical tasks in connection with the sale or lease of a manufactured home and the manufactured home retailer and its employees receive no compensation or other gain from a mortgage banker or a mortgage broker for the performance of the administrative or clerical tasks;

(10) "Licensee" means a loan officer, mortgage broker, mortgage banker, or mortgage servicer who is licensed under this subchapter;

(11)(A) "Loan officer" means an individual other than an exempt person described in subdivision (9) of this section who in exchange for compensation as an employee of or who otherwise receives compensation or remuneration from a mortgage broker or a mortgage banker:

(i) Solicits or offers to solicit an application for a mortgage loan;

(ii) Accepts or offers to accept an application for a mortgage loan;

(iii) Negotiates or offers to negotiate the terms or conditions of a mortgage loan;

(iv) Issues or offers to issue a mortgage loan commitment or interest rate guarantee agreement; or

(v) Provides or offers to provide modification of a mortgage loan.

(B) "Loan officer" does not include:

(i) An individual who performs clerical or administrative tasks in the processing of a mortgage loan at the direction of and subject to the supervision and instruction of a licensed loan officer;

(ii) An underwriter if the individual performs no activities under subdivision (11)(A) of this section; or

(iii) An individual who is solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. § 101(53D), as it existed on January 1, 2011;

(12) "Make a mortgage loan" means to close a mortgage loan, to advance funds, to offer to advance funds, or to make a commitment to advance funds to a borrower under a mortgage loan;

(13) "Managing principal" means a person who meets the requirements of § 23-39-505 and who agrees to be primarily responsible for the operations of a licensed mortgage broker, mortgage banker, or mortgage servicer;

(14) "Mortgage banker" means a person who engages in the business of making mortgage loans for compensation or other gain;

(15) "Mortgage broker" means a person who for compensation or other gain or in the expectation of compensation or other gain and, regardless of whether the acts are done directly or indirectly, through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers:

(A) Accepts or offers to accept an application for a mortgage loan;  
 (B) Solicits or offers to solicit an application for a mortgage loan;  
 (C) Negotiates or offers to negotiate the terms or conditions of a mortgage loan; or

(D) Issues or offers to issue mortgage loan commitments or interest rate guarantee agreements to borrowers;

(16) “Mortgage loan” means a loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, reverse mortgage, or other equivalent consensual security interest encumbering:

(A) A dwelling as defined in section 1602(w) of the Truth in Lending Act, 15 U.S.C. § 1601 et seq., as it existed on January 1, 2011; or

(B) Residential real estate upon which is constructed or intended to be constructed a dwelling;

(17) “Mortgage servicer” means a person that receives or has the right to receive from or on behalf of a borrower:

(A) Funds or credits in payment for a mortgage loan; or

(B) The taxes or insurance associated with a mortgage loan;

(18) “Operating subsidiary” means a separate corporation, limited liability company, or similar entity in which a national or state bank, savings and loan association, or credit union, the accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, maintains more than fifty percent (50%) voting rights, a controlling interest, or otherwise controls the subsidiary and no other party controls more than fifty percent (50%) of the voting rights or a controlling interest in the subsidiary;

(19) “Person” means an individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized;

(20) “Principal place of business” means a stationary construction consisting of at least one (1) enclosed room or building in which negotiations of mortgage loan transactions of others may be conducted in private or in which the primary business functions of the licensee are conducted;

(21) “Reverse mortgage” means a nonrecourse loan that pays a homeowner loan proceeds drawn from accumulated home equity; and

(22) “Unique identifier” means a number or other identifier assigned by protocols established by the automated licensing system approved by the commissioner.

**History.** Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 1; 2009, No. 731, §§ 1-5; 2011, No. 894, §§ 1-4; 2013, No. 1167, §§ 1-4.

**Amendments.** The 2013 amendment, in (9)(B)(vi), inserted “an operating subsidiary of a state-chartered bank regulated by the State Bank Department, a”

and deleted “or any of their operating subsidiaries” from the end; substituted “An attorney licensed in Arkansas ... provision of the legal services offered” for “at law rendering services in the performance of his or her duties as an attorney at law” in (9)(B)(xii); added (11)(A)(v); and inserted “or has the right to receive” in (17).



**23-39-513. Prohibited activities.**

In addition to the other activities that are prohibited under this subchapter, it is unlawful for any person other than a person described in § 23-39-502(9)(B)(vi) in the course of any mortgage loan transaction or activity:

(1) To misrepresent or conceal any material fact or make any false promise likely to influence, persuade, or induce an applicant for a mortgage loan or a borrower to take a mortgage loan or to pursue a course of misrepresentation through agents or otherwise;

(2) To improperly refuse to issue a satisfaction or release of a mortgage;

(3) To fail to account for or to deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a credit report, that the mortgage banker, mortgage broker, mortgage servicer, or loan officer is not entitled to retain;

(4) To pay, receive, or collect, in whole or in part, any commission, fee, or other compensation for brokering a mortgage loan in violation of this subchapter, including a mortgage loan brokered or solicited by any unlicensed person other than an exempt person;

(5) To advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information without disclosing the lengths of the loans, whether the interest rates are fixed or adjustable, and any other material limitations on the loans;

(6) To fail to disburse funds in accordance with a written commitment or agreement to make or service a mortgage loan;

(7) In connection with the advertisement, solicitation, brokering, making, servicing, purchase, or sale of any mortgage loan, to engage in any transaction, practice, or course of business that:

(A) Is not in good faith or fair dealing;

(B) Is misleading or deceptive; or

(C) Constitutes a fraud upon any person;

(8)(A) To broker or make a residential mortgage loan that contains a penalty for prepayment if the prepayment is made after the expiration of the thirty-six-month period immediately following the date on which the loan was made.

(B) A penalty for prepayment under subdivision (8)(A) of this section made within the thirty-six-month period shall not exceed any of the following amounts:

(i) Three percent (3%) of the principal loan amount remaining on the date of prepayment if the prepayment is made within the first twelve-month period immediately following the date the loan was made;

(ii) Two percent (2%) of the principal loan amount remaining on the date of prepayment if the prepayment is made within the second twelve-month period immediately following the date the loan was made; or



(iii) One percent (1%) of the principal loan amount remaining on the date of prepayment if the prepayment is made within the third twelve-month period immediately following the date the loan was made;

(9)(A) To influence or attempt to influence through coercion, extortion, or bribery the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan.

(B) This subdivision (9) does not prohibit a mortgage broker or mortgage banker from asking the appraiser to do one (1) or more of the following:

(i) Consider additional appropriate property information;

(ii) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(iii) Correct errors in the appraisal report;

(10) To broker or make a refinancing of a residential mortgage loan when the refinancing charges additional points and fees, within a twelve-month period after the original loan agreement was signed, unless the refinancing results in a reasonable, tangible net benefit to the borrower, considering all of the circumstances surrounding the refinancing;

(11) To broker, make, or service a mortgage loan in violation of any federal law or any law of this state;

(12) To engage in practices that are dishonest or unethical in the mortgage industry;

(13) To unreasonably fail to deliver or provide information or documents promptly to the commissioner upon written request or to knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information;

(14) To unreasonably fail to supervise the branches, loan officers, and employees of the mortgage broker, mortgage banker, or mortgage servicer;

(15) To fail to make payments in a timely manner from an escrow account held for the borrower to pay insurance, taxes, and other charges concerning the mortgage property without good cause, and the failure to pay results in late penalties or other negative activity;

(16) To place hazard, homeowners, or flood insurance on a mortgaged property:

(A) Without providing prior written notice to the borrower;

(B) If the mortgage servicer knows or has reason to know that adequate insurance coverage already exists; or

(C) In an amount that unreasonably exceeds the value of the insurable improvements or the last-known coverage amount or policy limits of insurance; or

(17)(A) To fail to refund to the borrower unearned premiums paid by or charged to a borrower for hazard, homeowners, or flood insurance placed by a mortgage banker or mortgage servicer if reasonable proof is available or provided that the borrower had or obtained coverage in effect resulting in the unnecessary placement of forced insurance.

(B) The borrower shall receive a refund of excess premium funds taken from the borrower when reasonable proof is provided within twelve (12) months of the forced placement.

**History.** Acts 2003, No. 554, § 1; 2003 720, § 1; 2011, No. 894, §§ 13 – 15; 2013, (2nd Ex. Sess.), No. 26, § 2; 2005, No. No. 1167, § 5.  
1679, § 3; 2007, No. 748, § 8; 2009, No. **Amendments.** The 2013 amendment  
164, § 11; 2009, No. 731, § 25; 2011, No. added (15) through (17).

### 23-39-514. Disciplinary authority.

(a) The Securities Commissioner by order may deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant under this subchapter or may restrict or limit the activities relating to mortgage loans of any licensee or any person who owns an interest in or participates in the business of a licensee if the commissioner finds that:

(1) The order is in the public interest; and

(2) Any of the following circumstances apply to the applicant, licensee, or any partner, member, manager, officer, director, loan officer, managing principal, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant or licensee. The person:

(A) Has filed an application for a license that as of its effective date or as of any date after filing contained any omission or statement that in light of the circumstances under which it was made is false or misleading with respect to any material fact;

(B) Has violated or failed to comply with any provision of this subchapter, any rule adopted by the commissioner, or any order of the commissioner issued under this subchapter or under Acts 1977, No. 806;

(C) Has pleaded guilty or nolo contendere to or has been found guilty in a domestic, foreign, or military court of:

(i) A felony;

(ii) An offense involving breach of trust, moral turpitude, money laundering, or fraudulent or dishonest dealing within the past ten (10) years; or

(iii) An offense involving mortgage lending, any aspect of the mortgage industry, or any aspect of the securities industry, the insurance industry, or any other activity pertaining to financial services;

(D) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage industry, the securities business, the insurance business, or any other activity pertaining to financial services;

(E) Is the subject of an order of the commissioner:

(i) Denying, suspending, revoking, restricting, or limiting that person's license as a mortgage broker, mortgage banker, mortgage servicer, loan officer, securities broker-dealer, securities agent, investment adviser, or investment adviser representative; or



(ii) Directing that person to cease and desist from an activity regulated by the commissioner, including any order entered pursuant to Acts 1977, No. 806;

(F) Is the subject of an order, including a denial, suspension, or revocation of authority to engage in a regulated activity by any other state or federal authority to which the person is, has been, or has sought to be subject, entered within the past five (5) years, including without limitation the mortgage industry;

(G) Has been found by a court of competent jurisdiction to have charged or collected any fee or rate of interest or made or brokered any mortgage loan with terms or conditions or in a manner contrary to Arkansas Constitution, Amendment 60;

(H) Does not meet the qualifications or the financial responsibility, character, or general fitness requirements under § 23-39-505 or any bond or net worth requirements under this subchapter;

(I) Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker, mortgage banker, or mortgage servicer who has been subject to an order or injunction described in subdivisions (a)(2)(D)-(G) of this section; or

(J)(i) Has failed to pay the proper filing fee, renewal fee, or any late fee under this subchapter.

(ii) The commissioner may enter a denial order against a person under this subsection when the person has failed to pay the proper filing fee, renewal fee, or any late fee under this subchapter, but the commissioner shall vacate the order when all fees have been paid.

(b)(1) The commissioner by order may impose a civil penalty upon a licensee or any partner, officer, director, member, manager, or other person occupying a similar status or performing a similar function on behalf of a licensee for any violation of this subchapter, a rule under this subchapter, or an order of the commissioner.

(2) The civil penalty shall not exceed ten thousand dollars (\$10,000) for each violation under subdivision (b)(1) of this section by a mortgage broker, mortgage banker, mortgage servicer, or loan officer.

(c)(1) The commissioner by order may summarily postpone or suspend the license of a licensee pending final determination of any proceeding under this section.

(2) Upon entering the order, the commissioner shall promptly notify the applicant or licensee that the order has been entered and the reasons for issuing the order.

(3) The applicant or licensee may contest the order by delivering a written request for a hearing to the commissioner within thirty (30) days from the date on which notice of the order is sent by the commissioner to the address of the licensee on file with the commissioner by first class mail, postage prepaid.

(4) The commissioner shall schedule a hearing to be held within thirty (30) days after the commissioner receives a timely written request for a hearing, unless the hearing is postponed for a reasonable amount of time at the request of the licensee.



(5) If a licensee does not request a hearing and the commissioner does not order a hearing, the order will remain in effect until it is modified or vacated by the commissioner.

(6) If a hearing is requested or ordered by the commissioner, after notice of and opportunity for hearing, the commissioner may modify or vacate the order or extend it until final determination.

(d) The commissioner by summary order may cancel a license or application if the commissioner finds that a licensee or applicant for a license:

(1) Is no longer in existence;

(2) Has ceased to do business as a loan officer, mortgage broker, mortgage banker, or mortgage servicer;

(3) Is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian; or

(4) Cannot be located after a reasonable search.

(e)(1) In addition to other powers under this subchapter, upon finding that any action of a person is in violation of this subchapter, the commissioner may summarily order the person to cease and desist from the prohibited action.

(2)(A) Upon entering the order under subdivision (e)(1) of this section, the commissioner shall promptly notify the person that the order has been entered and state the reasons for the order.

(B) The person may contest the cease and desist order by delivering a written request for a hearing to the commissioner within thirty (30) days from the date on which notice of the order is sent by the commissioner to the last known address of the person by first class mail, postage prepaid.

(C) The commissioner shall schedule a hearing to be held within a reasonable amount of time after the commissioner receives a timely written request for a hearing.

(D) If the person does not request a hearing and the commissioner does not order a hearing, the order will remain in effect until it is modified or vacated by the commissioner.

(E) If a hearing is requested or ordered, after notice of and opportunity for hearing, the commissioner may modify or vacate the order or make it permanent.

(3)(A) A person shall be subject to a civil penalty of up to twenty-five thousand dollars (\$25,000) for each violation of the commissioner's cease and desist order committed after entry of the order if:

(i) The person subject to the cease and desist order fails to appeal the order in accordance with § 23-39-515 or if the person appeals and the appeal is denied or dismissed; and

(ii) The person continues to engage in the prohibited action in violation of the commissioner's order.

(B) The commissioner may file an action requesting the civil penalty under subdivision (e)(3)(A) of this section with the Pulaski County Circuit Court or any other court of competent jurisdiction.

(C) The penalties of this section apply in addition to, but not in lieu of, any other provision of law applicable to a person for the person's failure to comply with an order of the commissioner.

(f) Unless otherwise provided, any action, hearing, or other proceeding under this subchapter shall be governed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(g) If the commissioner has grounds to believe that any person has violated the provisions of this subchapter or that facts exist that would be the basis for an order against a licensee or other person, the commissioner or the commissioner's designee, at any time, may investigate or examine the loans and business of the licensee and examine the books, accounts, records, and files of any licensee or other person relating to the complaint or matter under investigation.

(h)(1) The commissioner or the commissioner's designee may:

(A) Administer oaths and affirmations;

(B) Issue subpoenas to require the attendance of and to examine under oath all persons whose testimony the commissioner deems relevant to the person's business; and

(C) Issue subpoenas to require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the commissioner considers relevant or material to the inquiry.

(2)(A) In case of contumacy by or refusal to obey a subpoena issued to any person, the Pulaski County Circuit Court, upon application by the commissioner, may issue an order requiring the person to appear before the commissioner or the officer designated by the commissioner, to produce documentary evidence if so ordered, or to give evidence touching the matter under investigation or in question.

(B) Failure to obey the order of the court may be punished by the court as a contempt of court.

(3)(A) The assertion that the testimony or evidence before the commissioner may tend to incriminate or subject a person to a penalty or forfeiture shall not excuse the person from:

(i) Attending and testifying;

(ii) Producing any document or record; or

(iii) Obeying the subpoena of the commissioner or any officer designated by the commissioner.

(B) However, no person may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after claiming a privilege against self-incrimination, to testify or produce evidence, except that the person testifying is not exempt from prosecution and punishment for perjury or contempt committed while testifying.

(i)(1) From time to time and with or without cause, the commissioner may conduct examinations of the books and records of any applicant or licensee in order to determine the compliance with this subchapter and any rules adopted under this subchapter.

(2) The applicant or licensee shall pay a fee for each examination under subdivision (i)(1) of this section, not to exceed one hundred fifty



dollars (\$150) per examiner for each day or part of a day during which any examiners are absent from the office of the commissioner for the purpose of conducting the examination.

(3) In addition, the applicant or licensee may be required to pay the actual hotel and traveling expenses of the examiner traveling to and from the office of the commissioner while the examiner is conducting an examination under subdivision (i)(1) of this section.

(j) If the commissioner finds that the managing principal, branch manager, or loan officer of a licensee had knowledge of, or reasonably should have had knowledge of, or participated in any activity that results in the entry of an order under this section suspending or withdrawing the license of a licensee, the commissioner may prohibit the managing principal, branch manager, or loan officer from serving as a managing principal, branch manager, or loan officer for any period of time the commissioner deems appropriate.

(k) All orders shall contain written findings of fact and conclusions of law. Except for orders entered under subdivisions (c)(1) and (e)(1) of this section, before entering an order under this section, the commissioner shall provide:

(1) Prior notice to the licensee or person who is the subject of the order; and

(2) An opportunity for hearing.

(l) This section does not prohibit or restrict the informal disposition of a proceeding or allegations that might give rise to a proceeding by stipulation, settlement, consent, or default in lieu of a formal or informal hearing on the allegations or in lieu of the sanctions authorized by this section.

(m)(1) If it appears upon sufficient grounds or evidence satisfactory to the commissioner that any person or licensee has engaged in or is about to engage in any act or practice that violates this subchapter or any rule or regulation adopted or order issued under this subchapter or that the assets or capital of any licensee are impaired or the licensee's affairs are in an unsafe condition, the commissioner may:

(A) Refer the evidence which is available concerning violations of this subchapter or any rule, regulation, or order issued under this subchapter to the appropriate prosecuting attorney or regulatory agency, that with or without the reference may institute the appropriate criminal or regulatory proceedings under this subchapter; and

(B)(i) Summarily order the licensee or person to cease and desist from the act or practice under subdivisions (c)(1) and (e)(1) of this section and apply to the Pulaski County Circuit Court to enjoin the act or practice and to enforce compliance with this subchapter or any rule, regulation, or order issued under this subchapter, or both.

(ii) However, without issuing a cease and desist order, the commissioner may apply directly to the Pulaski County Circuit Court for injunctive or other relief.

(2) Upon proper showing, the court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus.



- (3) The commissioner may also seek and upon proper showing the appropriate court shall grant any other ancillary relief that may be in the public interest, including:
  - (A) The appointment of a receiver, temporary receiver, or conservator;
  - (B) A declaratory judgment;
  - (C) An accounting;
  - (D) Disgorgement;
  - (E) Assessment of a fine in an amount of not more than ten thousand dollars (\$10,000) for each violation; and
  - (F) Any other relief as may be appropriate in the public interest.
- (4) The court may not require the commissioner to post a bond.

**History.** Acts 2003, No. 554, § 1; 2005, No. 1679, § 4; 2007, No. 748, §§ 9, 10; 2009, No. 731, §§ 26, 27; 2011, No. 894, § 16; 2013, No. 1167, § 6.

**Amendments.** The 2013 amendment inserted “summary” to the introductory language in (d).

# **CHAPTER 40** **ARKANSAS PREPAID FUNERAL BENEFITS LAW**

<b>SECTION.</b>	<b>SECTION.</b>
23-40-103. Definitions.	23-40-115. Trust funds — Investments.
23-40-112. Prepaid funeral benefits contracts.	

## **23-40-103. Definitions.**

- As used in this chapter, unless the context otherwise requires:
- (1) “Cash accommodation items” means flowers, honorariums, death certificates, sales taxes, grave opening and closing, cemetery charges, and other items incidental to the funeral and disposition of the beneficiary which are to be furnished or provided by a third party at the time of death;
  - (2) “Contract beneficiary” means any natural person designated in a prepaid funeral benefits contract upon whose death funeral services or funeral merchandise, or both, shall be performed, provided, or delivered;
  - (3) “Contract price” means the aggregate moneys to be paid and the aggregate stated value of all other direct or indirect consideration to be assigned by purchasers of prepaid funeral benefits as provided in the contract, exclusive of any finance charge;
  - (4) “Contract proceeds” means the portion of the contract price collected by the seller from a contract for the sale of prepaid funeral benefits;
  - (5) “Licensee” or “permittee” means a person holding a valid permit or license issued pursuant to this chapter;
  - (6) “Liquid investments” means investments which can be sold at cost or greater, liquidated without penalty, and collected within five (5) banking days;

(7) "Net investment income" means:

(A) All revenue and earnings of the trust fund, including, but not limited to, interest, dividends, and capital gains; minus

(B) Investment expenses, trustee's fees, capital losses, and all revenue and earnings on cash accommodation funds;

(8) "Net worth" means the difference between the applicant's total assets and total liabilities as reflected in a balance sheet prepared in accordance with accounting principles and procedures approved by the Insurance Commissioner;

(9)(A) "Prearrangement" means an arrangement whereby a person, for himself or herself or on behalf of some other person, makes arrangement for funeral and burial services prior to the death of the person, without consideration and without an agreement or itemization specifying any particular service or merchandise, or the cost thereof, through the assignment or transfer, including the conditions that the assignor or transferor may choose to impose, of ownership to a licensee of an insurance policy or annuity contract, or proceeds thereof, or by the designation of a licensee as beneficiary of any such insurance policy or annuity contract.

(B) An assignment of an insurance policy or annuity or the proceeds thereof to a funeral home or the designation of a funeral home as beneficiary as described in subdivision (9)(A) of this section is not a prepaid funeral benefits contract;

(10)(A) "Prepaid funeral benefits contract" or "prepaid contract" means a contract or agreement for the prepayment and sale in this state of funeral services or funeral merchandise, including without limitation caskets, grave vaults, and all other articles of merchandise and services incidental to funeral services, at an agreed-upon price, to be delivered at an undetermined future date depending upon the death of the contract beneficiary.

(B) "Prepaid funeral benefits contract" or "prepaid contract" includes a nonspecified prepaid contract.

(C) "Prepaid funeral benefits contract" or "prepaid contract" does not include a prearrangement;

(11) "Seller" means the organization selling prepaid funeral benefits or owning any interest in any contract for prepaid funeral benefits pursuant to this chapter;

(12) "Surplus" means the funds or other property in excess of the undistributed net investment income and aggregate contract proceeds held in the trust fund;

(13) "Trustee" means a state or national bank or savings and loan association in this state, or, in the reasonable discretion of the Insurance Commissioner upon the terms and conditions that he or she may require, a securities brokerage firm licensed and in good standing with appropriate state and federal regulatory authorities; and

(14) "Nonspecified prepaid contract" means a prepaid contract that:

(A) Does not select specific funeral merchandise or funeral services when the contract is executed;



(B) Permits the selection of funeral merchandise or funeral services at the time of need; and

(C) Applies contract funds to the cost of funeral merchandise or funeral services selected at the time of need.

**History.** Acts 1985, No. 156, § 1; A.S.A. 1947, § 67-1713; Acts 1995, No. 852, § 1; 1997, No. 372, §§ 1-3; 2013, No. 476, §§ 1, 2.

**Amendments.** The 2013 amendment redesignated former (10) as (10)(A); in (10)(A), inserted “without limitation” following “including” and deleted “It does not include a prearrangement” at the end; added (10)(B) and (10)(C); and added (14).

### **23-40-112. Prepaid funeral benefits contracts.**

(a)(1) The Insurance Commissioner shall approve forms for prepaid funeral benefits contracts.

(2)(A) A nonspecified prepaid contract shall not be approved unless the nonspecified prepaid contract provides the contract holder with interest or earnings during the term of the nonspecified prepaid contract if the nonspecified prepaid contract is not canceled under § 23-40-122.

(B) If the nonspecified prepaid contract is canceled under § 23-40-122, the seller may retain the interest accumulated on the deposit or the cash surrender value of the insurance policy used to purchase the nonspecified prepaid contract in excess of the amount paid by the purchaser.

(C) The commissioner by rule may establish additional requirements for a nonspecified prepaid contract.

(b)(1) Prepaid funeral benefits contracts shall be in writing.

(2) A prepaid contract for specified benefits shall set forth the specific merchandise and services to be provided by the seller and the prepaid contract price.

(c)(1) All forms for prepaid funeral benefits contracts shall contain the provisions incidental to the orderly administration of this chapter as set forth in the rules prescribed by the commissioner.

(2) A prepaid contract form shall not be used without prior approval of the commissioner.

(d)(1) A prepaid contract for specified benefits shall provide that the seller shall furnish to the buyer the merchandise and services as set forth in the prepaid contract at the prepaid contract price, regardless of the cost of the merchandise or services at the date of the beneficiary's death.

(2)(A) However, the seller shall not be required to furnish at the prepaid contract price other items incidental to the funeral and disposition of the beneficiary that are clearly identified in the prepaid contract as cash accommodation items.

(B) The seller may charge the difference between the cash accommodation fund balance, including accrued interest, and the market price of the cash accommodation items as of the date of the beneficiary's death.



(C) If the total funds on deposit exceed the market price of the cash accommodation items, the seller shall return the excess to the buyer or his or her estate.

(e) The seller shall not be entitled to enforce a prepaid contract made in violation of this chapter, but the purchaser, or his or her heirs, or his or her legal representative shall be entitled to recover all amounts paid to the seller under any prepaid contract made in violation of this chapter.

(f)(1) This chapter does not prohibit the assignment or transfer of insurance contracts as consideration for prepaid funeral benefits furnished in accordance with this chapter or the designation of an organization licensed pursuant to this chapter as beneficiary of a funeral expense or other insurance policy.

(2) Such an assignment, transfer, or designation shall not be deemed to be a prepaid contract.

(g) The prepaid contract shall contain a provision in substantially the following form:

“NOTICE: If this contract is irrevocable and you choose to transfer this contract to a substitute provider, the entire amount of the contract will not be transferred and you may have to pay more to obtain 100% of the services provided for in the contract.”

(h) Each seller shall provide advance written notice to the prepaid contract purchaser that the seller intends to procure a single payment whole life insurance policy or annuity on the contract beneficiary to fund the prepaid funeral benefit contract for less money than the total amount of the cash payment if:

(1) The prepaid funeral benefits contract was originally intended by the contract purchaser to be fully paid in cash; and

(2) The amount of the single premium payment to the insurer by the seller is less than the cash payment provided to the seller by the contract purchaser.

**History.** Acts 1985, No. 156, §§ 2, 4; A.S.A. 1947, §§ 67-1714, 67-1716; Acts 1995, No. 852, §§ 4, 12; 2003, No. 987, § 3[2]; 2013, No. 476, § 3.

**Amendments.** The 2013 amendment rewrote the section heading; rewrote (a); substituted “Prepaid funeral benefits contracts shall” for “All contracts for sale of prepaid funeral benefits must” in (b)(1); substituted “A prepaid contract for specified benefits shall” for “and must” in (b)(2),

inserted “prepaid” in (b)(2), (c)(1), (d), (e) and (h); in (c)(1), deleted “of sales contracts” following “forms” and inserted “contracts”; substituted “A prepaid contract for specified benefits” for “All contracts for sale of prepaid funeral benefits” in (d)(1) and added subdivision designations in (d)(2); substituted “of this chapter” for “hereof” in (e); and deleted “the provisions” twice in (f)(1).

## 23-40-115. Trust funds — Investments.

(a)(1) The trustees shall invest the trust fund only in the following:

(A) Demand deposits, savings accounts, certificates of deposit, and all other accounts which are insured by the Federal Deposit Insur-

ance Corporation or the Federal Savings and Loan Insurance Corporation [abolished];

(B) Bonds and obligations which are insured by, fully guaranteed as to principal and interest by, and due from the United States Government or any of its agencies, including the Federal National Mortgage Association and the Government National Mortgage Association, and any repurchase obligations which are secured by any of the foregoing;

(C)(i)(a) Corporate, state, municipal, or political subdivision bonds or obligations that at the time of purchase are rated A or better by Moody's or A or better by Standard & Poor's rate services.

(b) The Insurance Commissioner by rule may permit the continued investment in a bond purchased in compliance with subdivision (a)(1)(C)(i)(a) of this section that is subsequently downgraded for the time and in the amounts established by the commissioner; or

(ii)(a) Bonds of any school district in this state.

(b) Provided, however, no more than thirty percent (30%) of the total trust assets may be invested in such school bonds; and

(D)(1) Mutual funds or common trust funds whose portfolio is made up of investments that are described in subdivisions (a)(1)(A)-(C) of this section.

(2) Investments described in subdivisions (a)(1)(B)-(D) of this section shall be purchased and held by the trustee which has trust powers under a trust agreement filed with and approved by the Insurance Commissioner.

(b) The trustee shall maintain the trust fund in a manner consistent with the following investment policies:

(1) [Repealed.]

(2) The trust fund shall contain at all times liquid investments having a cost basis not less than thirty percent (30%) of the total contract proceeds disbursed from the trust fund as described in § 23-40-116(1)-(3) during the preceding calendar year;

(3) No investment shall be sold, exchanged, or liquidated at less than its cost if it would result in the aggregate cost basis of the trust fund minus undistributed net investment income being less than the aggregate amount of contract proceeds held in the trust fund. However, this prohibition shall not apply if the seller contemporaneously deposits with the trustee a sum of money or other property in an amount equal to the loss realized upon the sale, exchange, or liquidation of such investment; and

(4) The portion of the contract proceeds collected for cash accommodation items pursuant to the terms of a contract shall be deposited into a separate account which shall be clearly identified as "cash accommodation funds" and shall set forth the name of the contract buyer. All income earned on the cash accommodation funds shall become a part of the principal of the respective accounts.



**History.** Acts 1985, No. 156, § 8; A.S.A. in (a)(1)(C)(i)(a), substituted “that at the 1947, § 67-1720; Acts 1993, No. 406, § 1; time of purchase” for “which” and “A or 1995, No. 852, § 7; 2013, No. 476, §§ 4, 5. better” for “AA or better” twice; added **Amendments.** The 2013 amendment, (a)(1)(C)(i)(b); and repealed (b)(1).

## CHAPTER 42

# ARKANSAS SECURITIES ACT

### SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ADMINISTRATION.
3. BROKER-DEALERS, AGENTS, AND INVESTMENT ADVISERS.
5. REGULATION OF TRANSACTIONS.

## SUBCHAPTER 1 — GENERAL PROVISIONS

### SECTION.

- 23-42-102. Definitions.  
23-42-106. Civil liability.

## 23-42-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1)(A) “Agent” means an individual, other than a broker-dealer, who:

- (i) Represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities; or
- (ii) Supervises individuals who effect or attempt to effect purchases or sales of securities for a broker-dealer.

(B) “Agent” does not include an individual who represents:

(i) An issuer in:

(a) Effecting transactions in a security exempted by § 23-42-503(a)(1)-(4) or (a)(8) and any other transactions in a security exempted by other subdivisions or subsections of § 23-42-503 which the Securities Commissioner may by rule or order prescribe;

(b) Effecting transactions exempted by § 23-42-504 unless otherwise required by § 23-42-504;

(c) Effecting transactions in covered securities exempted by:

(1) Section 18(b)(3) of the Securities Act of 1933, concerning sales to qualified purchasers;

(2) Section 18(b)(4)(D) of the Securities Act of 1933, concerning sales of securities exempt under Section 3(a) of the Securities Act of 1933; or

(3) Rule or order of the commissioner;

(d) Effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

(e) Effecting transactions involving a reorganization or any other individual assisting the issuer or any other constituent party in the process of the reorganization, so long as the individual is not employed for the primary purpose of obtaining or soliciting proxies,



consents, or other required means of approval from the security holders of the issuer or any other constituent party to the reorganization and receives no compensation other than his or her regular salary and reimbursement for actual expenses, if any, incurred in good faith in the course of such duties or activities; or

(ii) A broker-dealer in effecting a transaction for a customer in this state if:

(a) Such a transaction is effected on behalf of a customer that, for thirty (30) days prior to the day of the transaction, maintained an account with the broker-dealer;

(b) The individual is not ineligible to register with this state for any reason;

(c) The individual is registered with a registered securities association and at least one (1) state;

(d) The broker-dealer with which the individual is associated is registered with this state;

(e)(1) The transaction is effected by the individual:

(A) To which the customer was assigned for fourteen (14) days prior to the day of the transaction; and

(B) Who is registered with a state in which the customer was a resident or was present for at least thirty (30) consecutive days during the one-year period prior to the transaction. Except that, if the customer is present in this state for thirty (30) or more consecutive days or has permanently changed his or her residence to this state, this subdivision (1)(B)(ii) shall not be applicable unless the individual files with the commissioner an application for registration within ten (10) calendar days of the later of the date of the transaction or the date of the discovery of the presence of the customer in this state for thirty (30) or more consecutive days or the change in the customer's residence.

(2) For purposes of subdivision (1)(B)(ii)(e)(1)(B) of this section, each of up to three (3) individuals who are designated to effect transactions during the absence or unavailability of the assigned individual for a customer may be treated as such an assigned individual; and

(f) The transaction is effected within the period beginning on the date on which the individual files with the commissioner an application for registration and ending on the earlier of:

(1) Sixty (60) days after the date the application is filed; or

(2) The time at which the commissioner notifies the individual that he or she has denied the application for registration or has stayed the pendency of the application for cause.

(C) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he or she otherwise comes within this definition;

(2)(A) "Branch office" means any location other than the main office of a broker-dealer or investment adviser where an agent or representative regularly conducts business on behalf of the broker-dealer or investment adviser.

(B) "Branch office" includes a location that is held out as an office where an agent or representative regularly conducts business on behalf of a broker-dealer or investment advisor.

(C) "Branch office" does not include:

(i) A location that is established solely for customer service or back-office-type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(ii) A location that is the primary residence of the agent or representative if:

(a) Only agents or representatives who reside at the location and are members of the same immediate family conduct business at the location;

(b) The location is not held out to the public as an office and the agent or representative does not meet with customers at the location;

(c) Neither customer funds nor securities are handled at the location;

(d) The agent or representative is assigned to a designated branch office and the designated branch office is reflected on all business cards, stationery, advertisements, and other communications to the public by the agent or representative;

(e) The correspondence of the agent or representative and communications with the public are subject to the supervision of the broker-dealer or investment adviser with which the agent or representative is associated;

(f) Electronic communications, including email, are made through the electronic system of the broker-dealer or investment adviser;

(g) All orders for securities are entered through the designated branch office or an electronic system established by a broker-dealer that is reviewable at the branch office;

(h) Written supervisory procedures pertaining to supervision of activities conducted at the residence are maintained by the broker-dealer or investment adviser; and

(i) A list of the residence locations is maintained by the broker-dealer or investment adviser;

(iii)(a) A location other than a primary residence that:

(1) Is used for a securities or investment advisory business for less than thirty (30) business days in any one (1) calendar year; and

(2) Satisfies the requirements of subdivisions (2)(C)(ii)(b)-(h) of this section.

(b) As used in this subdivision (2)(C)(iii), "business day" does not include a day in which the agent or representative spends at least four (4) hours at the designated branch office of the agent or representative during the hours that the designated branch office is normally open for business;

(iv) An office of convenience that is not held out to the public as an office where associated persons occasionally and exclusively by appointment meet with customers;

(v) A location that is used primarily to engage in nonsecurities activities and from which the agent or representative effects no more



than twenty-five (25) securities transactions in any one (1) calendar year, if any advertisement or sales literature identifying the location also provides the address and telephone number of another location from which the agent or representative conducting business at the location is directly supervised;

(vi) The floor of a registered national securities exchange where a broker-dealer conducts a direct access business with public customers; or

(vii) A temporary location established in response to the implementation of a business continuity plan;

(3)(A) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for his or her own account.

(B) "Broker-dealer" does not include:

(i) An agent;

(ii) An issuer;

(iii) A bank, savings institution, savings and loan association, or trust company;

(iv) A person that has no place of business in this state if:

(a) The person effects transactions in this state exclusively with or through:

(1) The issuers of the securities involved in the transactions;

(2) Other broker-dealers; or

(3) Banks, savings institutions, savings and loan associations, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(b) The person:

(1) Is registered under the securities law of the state in which it has a principal place of business;

(2) Is registered or not required to be registered as a broker-dealer under the Securities Exchange Act of 1934; and

(3) Does not effect transactions with more than three (3) persons in this state during any period of twelve (12) consecutive months other than transactions with:

(A) The issuer of a security involved in the transaction;

(B) Another broker-dealer; or

(C) A bank, a savings institution, a savings and loan association, a trust company, an insurance company, an investment company as defined in the Investment Company Act of 1940, a pension or profit-sharing trust, or another financial institution or institutional buyer, whether acting for itself or as a trustee; and

(v) A person that is a resident of Canada and has no office or other physical presence in this state, if the person:

(a) Only effects or attempts to effect transactions in securities:

(1) With or through the issuers of the securities involved in the transactions, broker-dealers, banks, savings institutions, trust com-



panies, insurance companies, qualified purchasers as defined by the Securities and Exchange Commission, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

(2) With or for a person from Canada that is temporarily present in this state if the person and the person from Canada had a bona fide business-client relationship before the person from Canada entered this state; or

(3) With or for a person from Canada that is present in this state and has transactions that are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor;

(b) Files a notice in the form of the person's current application required by the jurisdiction in which the person's main office is located and a consent to service of process;

(c) Is a member of a self-regulatory organization or stock exchange in Canada;

(d) Maintains the person's provincial or territorial registration and the person's membership in good standing in a self-regulatory organization or stock exchange;

(e) Discloses to the person's clients in this state that the person is not subject to the full regulatory requirements of this chapter; and

(f) Is not in violation of § 23-42-507;

(4) "Commissioner" means the Securities Commissioner;

(5) "Covered security" means any security described as a covered security in section 18(b) of the Securities Act of 1933;

(6)(A) "Farm cooperative" means any cooperative formed for the purpose of:

(i) Purchasing, producing, processing, marketing, distributing, or selling crops or livestock for, or on behalf of, its members; or

(ii) Purchasing, marketing, or distributing meat, dairy, bakery, produce, or other food or grocery products for, or on behalf of, its members.

(B) "Farm cooperative" shall not include any association formed for the purpose of purchasing food or grocery products for, or on behalf of, consumers;

(7) "Fraud", "deceit", and "defraud" are not limited to common-law deceit;

(8) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends;

(9) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

(A) A bank, savings and loan association, credit union, or trust company;

(B) A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession;

(C) A broker-dealer whose performance of these services is solely incidental to the conduct of his or her business as a broker-dealer and who receives no special compensation for them;

(D) A publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service of general, regular, and paid circulation, whether communicated in hard copy form, by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(E) A person who has no place of business in this state if:

(i) His or her only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(ii) During the preceding twelve-month period he or she has had fewer than six (6) clients who are residents of this state, other than those persons specified in subdivision (9)(E)(i) of this section; or

(F) Such other persons not within the intent of this subsection as the commissioner may by rule or order designate;

(10) "Issuer" means every person who issues or proposes to issue any security, except that:

(A) With respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term "issuer" means the persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the securities are issued;

(B) In the case of an unincorporated association which provides by its articles for limited liability of any or all of its members, or in the case of a trust, committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity;

(C) With respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is used or is to be used;

(D) With respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of the right or of any whole or fractional interest in the right who creates fractional interests therein for the purpose of the offering; and

(E) For life settlement contracts, "issuer" means:



(i) For a fractional or pooled interest in a life settlement contract, the person that creates for the purpose of sale the fractional or pooled interest; and

(ii) For a life settlement contract that is not fractionalized or pooled, the person effecting the transaction with the investor in the contract, but does not include a broker-dealer or agent of a broker-dealer;

(11) "Main office" means the principal place of business of a broker-dealer or an investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser;

(12) "Nonissuer" means not directly or indirectly for the benefit of the issuer;

(13) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(14) "Representative" means any partner, officer, director of an investment adviser, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who for compensation:

(A) Makes any recommendation or otherwise renders advice regarding securities;

(B) Manages accounts or portfolios of clients;

(C) Determines which recommendation or advice regarding securities should be given; or

(D) Supervises employees who perform any of the foregoing;

(15)(A)(i) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(ii) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(iii) Any security given or delivered with, or given as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(iv) A purported gift of assessable stock is considered to involve an offer and sale.

(v) Every other sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(B) The terms defined in this subdivision (15) do not include:

(i) Any bona fide pledge or loan;

(ii) Any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock;

(iii) Any stock split, reverse stock split, or change in par value which involves the substitution of a security of an issuer for another security of the same issuer; or

(iv) Any act incident to a judicially approved reorganization in which a security is issued in exchange for one (1) or more outstanding securities, claims, or property interests, or partly in such an exchange and partly for cash;

(16) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisers Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names, as amended;

(17)(A) "Security" means any:

- (i) Note;
- (ii) Stock;
- (iii) Treasury stock;
- (iv) Bond;
- (v) Debenture;
- (vi) Evidence of indebtedness;
- (vii) Certificate of interest or participation in any profit-sharing agreement;
- (viii) Collateral-trust certificate;
- (ix) Preorganization certificate or subscription;
- (x) Transferable share;
- (xi) Investment contract;
- (xii) Variable annuity contract;
- (xiii) Life settlement contract or fractionalized or pooled interest in a life settlement contract;
- (xiv) Voting-trust certificate;
- (xv) Certificate of deposit for a security;
- (xvi) Certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or

(xvii) In general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(B) Except as set forth in subdivision (17)(A)(xiii) of this section, "security" does not include any insurance or endowment policy or annuity contract or variable annuity contract issued by any insurance company; and

(18) "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.



**History.** Acts 1959, No. 254, § 13; 1961, No. 248, § 6; 1963, No. 479, § 2; 1973, No. 47, §§ 10, 11; 1975, No. 697, § 2; 1975, No. 844, § 6; 1977, No. 493, §§ 4, 5; 1977, No. 806, § 24A; 1983, No. 836, §§ 13, 26; 1983, No. 885, § 1; A.S.A. 1947, § 67-1247; Acts 1987, No. 776, § 1; 1993, No. 1147, § 1802; 1995, No. 845,

§ 1; 1997, No. 173, § 1; 2001, No. 468, §§ 1, 2; 2009, No. 534, § 1; 2011, No. 338, § 1; 2011, No. 339, §§ 1 – 3; 2013, No. 460, §§ 1, 2, 3.

**Amendments.** The 2013 amendment substituted “or” for “and” at the end of (1)(A)(i); rewrote (1)(B)(i)(c); and added “for compensation” at the end of (14).

## CASE NOTES

### Agents.

Bond counsel who prepared disclosure documents for the bond underwriter was not shown to have materially aided in the sale of the bonds such as to be liable as the seller’s agent under § 23-42-106(c) because there was no proof to establish that bond counsel represented the seller in the

seller’s effecting or attempting to effect purchases or sales of the bonds or that bond counsel supervised individuals who were effecting or attempting to effect purchases or sales of the bonds for the seller. *First Ark. Bank & Trust v. Gill Elrod Ragon Owen & Sherman, P.A.*, 2013 Ark. 159, — S.W.3d — (2013).

### 23-42-106. Civil liability.

(a)(1) A person is liable to a buyer of a security if the person offers or sells the security:

(A) In violation of § 23-42-301, § 23-42-212(b), § 23-42-501(1) or (2), a rule or order of the Securities Commissioner under § 23-42-502 which requires the affirmative approval of sales literature before it is used, or any condition imposed under § 23-42-403(d), § 23-42-404(g), or § 23-42-404(i); or

(B) By means of an untrue statement of a material fact or a failure to state a material fact necessary in order to make the statement made, in the light of circumstances under which it is made, not misleading, if the buyer does not know of the untruth or omission and meets the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(2) In a successful action under subdivision (a)(1) of this section, the buyer may recover costs and reasonable attorney’s fees plus:

(A) Upon tender of the security, the consideration paid for the security and interest at six percent (6%) per year from the date of payment, less the amount of any income received from owning the security; or

(B)(i) Damages if the buyer no longer owns the security.

(ii) Damages are the amount that would be recoverable upon a tender of the security less the value of the security when the buyer disposed of the security plus interest at six percent (6%) per year from the date of disposition of the security.

(b)(1) A person who purchases a security in violation of §§ 23-42-301, 23-42-307, 23-42-507, and 23-42-508, or otherwise by means of an untrue statement of a material fact or a failure to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, is liable to a

seller of the security if the seller does not know of the untruth or omission and meets the burden of proof that the seller did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(2)(A) In a successful action under subdivision (b)(1) of this section, the seller may recover costs and reasonable attorney's fees plus:

(i) Upon tender of the consideration the seller received in a transaction under subdivision (b)(1) of this section:

(a) The security; or

(b) The security plus any income or other distributions in cash or other property received directly or indirectly by the purchaser; or

(ii)(a) Damages together with interest at six percent (6%) per year from the date of purchase.

(b) Damages may include out-of-pocket losses or losses for the benefit of the bargain.

(B) Notice of willingness to pay the amount specified in exchange for the security is a valid tender under subdivision (b)(2)(A)(i) of this section pending acceptance of the tender by the purchaser.

(c)(1) A person that directly or indirectly receives consideration for providing investment advice to another party:

(A) In violation of § 23-42-301 is liable to the other party for the consideration paid for the advice, interest at the rate of six percent (6%) per year from the date of payment, costs, and a reasonable attorney's fee; or

(B) By employing a device, scheme, or artifice to defraud the other party or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit upon the other party is liable to the other party for:

(i) The consideration paid for the advice plus interest at the rate of six percent (6%) per year from the date of payment;

(ii) Damages caused by the fraudulent or deceitful conduct less the amount of any income received as a result of the fraudulent or deceitful conduct;

(iii) Costs; and

(iv) A reasonable attorney's fee.

(2) Subdivision (c)(1) of this section does not apply to a broker-dealer or its agents if:

(A) The investment advice provided is solely incidental to transacting business as a broker-dealer; and

(B) No special compensation is paid for the investment advice.

(d)(1) A secondary offender has joint and several liability with a right of contribution for the actions of a primary offender unless the secondary offender satisfies the burden of proving that the secondary offender did not know, and in the exercise of reasonable care could not have known, of the existence of the actions of a primary offender that give rise to liability under this section.

(2) As used in subdivision (d)(1) of this section:

(A) "Primary offender" means a person that is liable under subsection (a), subsection (b), or subsection (c) of this section; and



(B) "Secondary offender" means:

(i) A person that controls a primary offender;

(ii) A partner, officer, or director of a primary offender and any other person occupying a similar status or performing a similar function with respect to the primary offender;

(iii) An employee of a primary offender who materially aids in the actions of a primary offender that give rise to liability under this section; and

(iv) A broker-dealer, agent, investment adviser, or investment adviser representative that materially aids in the actions of a primary offender that give rise to liability under this section.

(e) A tender required by this section may be made at any time before entry of judgment.

(f) Every cause of action under this section survives the death of a person who might have been a plaintiff or defendant.

(g) A person may not sue under this section unless the action is instituted within three (3) years after the violation occurred.

(h) A person may not sue under this section:

(1) If the buyer received a written offer, before suit and at a time when he or she owned the security, to refund the consideration paid together with interest at six percent (6%) per year from the date of payment less the amount of any income received on the security, and he or she failed to accept the offer within thirty (30) days of its receipt; or

(2) If the buyer received such an offer before suit and at a time when he or she did not own the security unless he or she rejected the offer in writing within thirty (30) days of its receipt.

(i) A person who has made or engaged in the performance of a contract in violation of this chapter or any rule or order of the commissioner, or who has acquired any purported right under the contract with knowledge of the facts by reason of which its making or performance was in violation may not sue on the contract.

**History.** Acts 1959, No. 254, § 22; No. 173, § 2; 1999, No. 1225, § 1; 2013, 1971, No. 131, § 6; 1973, No. 47, § 17; No. 460, § 4.  
1977, No. 493, §§ 14, 16; A.S.A. 1947, § 67-1256; Acts 1995, No. 845, § 2; 1997,

**Amendments.** The 2013 amendment rewrote the section.

## CASE NOTES

### ANALYSIS

Agent.  
Control of Sale.  
Seller.

### Agent.

Bond counsel who prepared disclosure documents for the bond underwriter was not shown to have materially aided in the

sale of the bonds such as to be liable as the seller's agent under subsection (c) of this section because there was no proof to establish that bond counsel represented the seller in the seller's effecting or attempting to effect purchases or sales of the bonds or that bond counsel supervised individuals who were effecting or attempting to effect purchases or sales of the bonds for the seller. First Ark. Bank &

Trust v. Gill Elrod Ragon Owen & Sherman, P.A., 2013 Ark. 159, — S.W.3d — (2013).

#### **Control of Sale.**

Bond counsel who prepared disclosure documents for the bond underwriter was not shown to have controlled the sale of the bonds and was not liable to the purchasers under subsection (c) of this section because there was no proof that bond counsel directed the management and policies of the seller. First Ark. Bank & Trust v. Gill Elrod Ragon Owen & Sherman, P.A., 2013 Ark. 159, — S.W.3d — (2013).

#### **Seller.**

Bond counsel's failure in preparing the disclosure documents for the bond under-

writer to directly disclose the superior purchase mortgage encumbering the property pledged as security for the bonds did not constitute a sale by bond counsel of a security by means of an untrue statement of material fact because the bonds were issued by the municipal improvement district and sold through the underwriter; bond counsel was not a seller and, as it was not alleged that bond counsel was a seller, bond counsel could not be liable under subsection (a) of this section. First Ark. Bank & Trust v. Gill Elrod Ragon Owen & Sherman, P.A., 2013 Ark. 159, — S.W.3d — (2013).

## **SUBCHAPTER 2 — ADMINISTRATION**

#### **SECTION.**

23-42-211. Disposition of fees.

23-42-213. Disposition of fines — Investor Education Fund.

**Effective Dates.** Acts 2013, No. 438, § 3: July 1, 2013. Emergency clause provided: "It is hereby found and determined by the General Assembly that the effectiveness of this Act on July 1, 2013 is essential to the operation of programs supported by funds deposited into and contained in the Securities Department Fund, and that in the event of the extension of the legislative session, the delay in

the effective date of this Act beyond July 1, 2013 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2013."

### **23-42-211. Disposition of fees.**

(a)(1) There is created on the books of the Chief Fiscal Officer of the State, the Auditor of State, and the Treasurer of State a fund to be known as the "Securities Department Fund".

(2) The fund shall be used for the maintenance, operation, support, and improvement of the State Securities Department in carrying out its functions, powers, and duties as set out by law and by rule and regulation not inconsistent with law.

(3) The fund shall consist of those portions of fees designated for deposit into the fund pursuant to §§ 23-42-304(a)(2), (a)(4), and (a)(5) and 23-42-404(b)(1) and such other funds as may be provided by law or regulatory action.



(4) Notwithstanding subdivision (a)(3) of this section, no more than four million dollars (\$4,000,000) shall be deposited into the fund in any one (1) fiscal year.

(b) The department is authorized to promulgate such rules and regulations necessary to administer the fees, rates, tolls, or charges for services established by this section and is directed to prescribe and collect such fees, rates, tolls, or charges for the services by the department in such manner as may be necessary to support the programs of the department as directed by the Governor and the General Assembly.

**History.** Acts 1959, No. 254, § 30; 1961, No. 248, § 10; 1973, No. 471, § 3; A.S.A. 1947, § 67-1262; Acts 1993, No. 659, §§ 1, 5; 1993, No. 850, §§ 1, 5; 2003, No. 759, § 1; 2009, No. 534, § 3; 2011, No. 294, § 8; 2013, No. 438, § 2.

**Amendments.** The 2013 amendment, in (a)(4), substituted “four million dollars (\$4,000,000)” for “two million dollars (\$2,000,000),” and deleted “until July 1, 2013, at which time this limitation shall expire” at the end.

### **23-42-213. Disposition of fines — Investor Education Fund.**

(a) There is created on the books of the Chief Fiscal Officer of the State, the Auditor of State, and the Treasurer of State a fund to be known as the “Investor Education Fund”.

(b) Except as provided by subsection (c) of this section, all fines imposed and collected or moneys collected in lieu of a fine under §§ 23-42-209 and 23-42-308 shall be deposited as special revenues into the State Treasury and credited to the Investor Education Fund, to be administered by the Securities Commissioner for the following purposes:

(1) To inform and educate the public regarding investments in securities in order to help investors and potential investors:

(A) Evaluate their investment decisions;

(B) Protect themselves from unfair, inequitable, or fraudulent offerings;

(C) Choose their broker-dealers, agents, and investment advisers more carefully;

(D) Be alert for false or misleading advertising or other harmful practices; and

(E) Know their rights as investors; and

(2) To pay for:

(A) Costs, expenses, and charges incurred by the State Securities Department in connection with the presentation and dissemination of information to the public as described in this section, including costs of printing copies of the Arkansas Securities Act, § 23-42-101 et seq., Rules of the Arkansas Securities Commissioner, and other materials designed to inform the public as set forth in this section;

(B) Costs of advertising and promotional materials designed to accomplish the purposes of this subdivision (b)(2);

(C) Costs of equipment necessary or useful for such presentations; and

(D) Costs and expenses associated with conducting a stock market game for educational purposes in selected schools in the state's public school system.

(c) Funds in excess of one hundred fifty thousand dollars (\$150,000) collected in any one (1) fiscal year shall be designated as special revenues and deposited into the Securities Department Fund.

**History.** Acts 2003, No. 759, § 2; 2013, No. 460, § 5.

**Amendments.** The 2013 amendment rewrote (c).

### SUBCHAPTER 3 — BROKER-DEALERS, AGENTS, AND INVESTMENT ADVISERS

#### SECTION.

23-42-301. Registration required — Unlawful acts — Supervision requirements.

23-42-308. Denial, suspension, revoca-

tion, or withdrawal of registration, and other penalties.

#### **23-42-301. Registration required — Unlawful acts — Supervision requirements.**

(a) It is unlawful for a person to transact business in this state as a broker-dealer or agent unless he or she is registered under this chapter.

(b)(1) It is unlawful for a registered broker-dealer or issuer to employ an unregistered agent except a nonresident agent who is registered by any other state securities administrator and who effects transactions in this state exclusively with registered broker-dealers.

(2) The registration of an agent is not effective during a period when he or she is not associated with a particular:

(A) Broker-dealer registered under this chapter; or

(B) Issuer.

(3)(A) A broker-dealer or issuer shall notify promptly the Securities Commissioner or the commissioner's designee if an agent begins or terminates:

(i) An association with a broker-dealer or issuer; or

(ii) The activities that make him or her an agent of the broker-dealer or issuer.

(B) If an agent terminates or withdraws his or her registration with a broker-dealer or issuer, a subsequent application by the agent for registration is treated as:

(i) An initial registration; and

(ii) A notification by the agent of termination or withdrawal of the previous registration or application.

(4) [Repealed.]

(c) It is unlawful for a person to transact business in this state as an investment adviser or investment adviser representative without first being registered under this chapter unless the person:

(1) Is registered as an investment adviser with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-1 et seq., as it existed on January 1, 2013,



and has filed with the commissioner or the commissioner's designee a notice filing consisting of:

(A) A copy of documents on file with the Securities and Exchange Commission that the commissioner may by rule or order prescribe; and

(B) The fee set forth in § 23-42-304(a)(3);

(2) Is not registered as an investment adviser with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-1 et seq., as it existed on January 1, 2013, because the person is not an investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-1 et seq., as it existed on January 1, 2013;

(3) Is a "representative" of an investment adviser registered with the United States Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-1 et seq., as it existed on January 1, 2013, and has no place of business located in this state; or

(4) Is a supervised person of an investment adviser registered with the United States Securities and Exchange Commission, but is not an investment adviser representative as defined by Rule 203A-3 of the rules and regulations of the Investment Advisers Act of 1940, 17 C.F.R. § 275, as they existed on January 1, 2013.

(d)(1) A notice filing required by subdivision (c)(1) of this section becomes effective upon receipt by the commissioner or the commissioner's designee of the notice filing, consent to service of process, and the appropriate fee.

(2)(A) The registration and notice filing required by subdivision (c)(1) of this section expires December 31 of each year unless renewed.

(B) Effective upon the commissioner's receipt of notification, an investment adviser may terminate the investment adviser's notice filing under subdivision (c)(1) of this section by providing the commissioner notification of the termination.

(e) A broker-dealer or investment adviser shall not conduct business from a branch office within this state unless the branch office is registered under this chapter.

(f)(1) A broker-dealer shall establish, maintain, and enforce a system to supervise the activities of its agents and employees that is reasonably designed to achieve compliance with this chapter, the rules and orders of the commissioner, all other applicable state and federal securities laws, and the rules of self-regulatory organizations.

(2) A broker-dealer's supervisory system shall include without limitation the:

(A) Establishment and maintenance of written procedures designed to achieve compliance with subdivision (f)(1) of this section; and

(B) Appointment of at least one (1) agent of the broker-dealer, who is registered in Arkansas and meets the qualifications and performs the supervisory responsibilities of the broker-dealer for activities in this state under rules established by the commissioner.

(g)(1) An investment adviser shall establish, maintain, and enforce a system to supervise the activities of its representatives and employees that is reasonably designed to achieve compliance with this chapter, the rules and orders of the commissioner, all other applicable state and federal securities laws, and the rules of self-regulatory organizations.

(2) An investment adviser's supervisory system shall include without limitation the:

(A) Establishment and maintenance of written procedures designed to achieve compliance with subdivision (g)(1) of this section; and

(B) Appointment of at least one (1) representative of the investment adviser, who is registered in Arkansas and meets the qualifications and performs the supervisory responsibilities of the investment adviser for activities in this state under rules established by the commissioner.

(h) The commissioner may by rule establish concurrent registration with a broker-dealer, issuer, or investment adviser or any combination of broker-dealers, issuers, and investment advisers.

**History.** Acts 1959, No. 254, § 3; 1961, No. 248, § 1; 1973, No. 47, §§ 1, 2; 1975, No. 844, §§ 1, 5; 1977, No. 493, § 1; 1977, No. 806, § 24A; 1983, No. 836, §§ 1-4; 1985, No. 939, § 1; A.S.A. 1947, § 67-1237; Acts 1995, No. 845, § 11; 1995 (1st Ex. Sess.), No. 14, § 1; 1997, No. 173, § 11; 2009, No. 462, § 8; 2009, No. 534, § 4; 2011, No. 338, § 2; 2013, No. 460, §§ 6, 7, 8, 9, 10.

**Amendments.** The 2013 amendment repealed (b)(4); rewrote (c); substituted "is registered in Arkansas and meets the qualifications and performs" for "shall meet the qualifications and carry out" in (f)(2)(B) and (g)(2)(B); and added (h).

### **23-42-308. Denial, suspension, revocation, or withdrawal of registration, and other penalties.**

(a) The Securities Commissioner may by order deny, suspend, make conditional or probationary, or revoke any registration if he or she finds that:

(1) The order is in the public interest; and

(2) The applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director; any person occupying a similar status or performing similar functions; or any person directly or indirectly controlling the broker-dealer or investment adviser:

(A) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(B) Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act;

(C) Has been convicted, within the past ten (10) years, of any misdemeanor involving a security or any aspect of the securities



business, or of any felony, or has pending against him or her a charge of unlawful conduct involving securities or any aspect of the securities business;

(D) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(E) Is the subject of an order of the commissioner denying, suspending, revoking, or making conditional or probationary a registration as a broker-dealer, agent, investment adviser, or representative;

(F)(i) Is the subject of an order entered within the past five (5) years by:

(a) The securities administrator of any other state;

(b) Any national securities, commodities, or banking agency or jurisdiction;

(c) Any national securities or commodities exchange;

(d) Any securities or commodities self-regulatory organization;

(e) Any registered securities association or clearing agency denying, revoking, suspending, or expelling him or her from registration as a broker-dealer, agent, investment adviser, or representative, or the substantial equivalent of those terms;

(f) Is the subject of a United States postal fraud order; or

(g) The insurance administrator of any state.

(ii) However, the commissioner may not:

(a) Institute a revocation or suspension proceeding under this subdivision (a)(2)(F) more than five (5) years from the date of the order relied on; and

(b) Enter an order under this subdivision (a)(2)(F) on the basis of an order under another state act, unless that order was based on facts which would currently constitute a ground for an order under this section;

(G) Has engaged in dishonest or unethical practices in the securities business;

(H) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subdivision (a)(2)(H) without a finding of insolvency as to the broker-dealer or investment adviser;

(I) Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except that:

(i) The commissioner may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than the broker-dealer himself or herself, if he or she is an individual, or an agent of the broker-dealer;

(ii) The commissioner may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than the investment adviser himself or herself, if he or she is an individual, or any other person who represents the investment

adviser in doing any of the acts which make him or her an investment adviser;

(iii) The commissioner may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge, or both;

(iv) The commissioner shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer; and

(v) The commissioner shall consider that an investment adviser or representative is not necessarily qualified solely on the basis of experience as a broker-dealer or agent;

(J) Has failed reasonably to supervise the agents or employees of the broker-dealer or the representatives or employees of the investment adviser; or

(K) Has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subdivision (a)(2)(K), and he or she shall vacate the order when the deficiency has been corrected.

(b) The commissioner may not institute a suspension or revocation proceeding solely on the basis of a final judicial or administrative order known to him or her when registration became effective, unless the proceeding is instituted within one hundred eighty (180) days after registration or unless the applicant or registrant waives the time limitation. For the purpose of this provision, a final judicial or administrative order shall not include an order that is stayed or subject to further review or appeal. This provision shall not apply to renewal registration.

(c)(1) The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(2) Upon the entry of the order, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer, if the applicant or registrant is an agent or representative, that the order has been entered, and of the reasons therefor, and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing.

(3) If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) The commissioner may by summary order cancel a registration or application if he or she finds that any registrant or applicant:

(1) Is no longer in existence;

(2) Has ceased to do business as a broker-dealer, agent, investment adviser, or representative; or

(3) Is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after a reasonable search.



(e)(1) Withdrawal from registration as a broker-dealer, agent, investment adviser, or representative becomes effective thirty (30) days after receipt of an application to withdraw, or within such shorter period of time as the commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty (30) days after the application is filed.

(2) If a proceeding is pending or instituted, then withdrawal becomes effective at such time and upon such conditions as the commissioner by order determines.

(3) If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may nevertheless institute a revocation or suspension proceeding under subdivision (a)(2)(B) of this section within one (1) year after withdrawal became effective and may enter a revocation or suspension order as of the last date on which registration was effective.

(f) No order may be entered under any part of this section, except under subdivision (c)(1) of this section, without:

(1) Appropriate prior notice to the applicant or registrant and to the employer or prospective employer if the applicant or registrant is an agent or representative;

(2) Opportunity for hearing; and

(3) Written findings of fact and conclusions of law.

(g) In addition to the authority granted in subsections (a)-(e) of this section, upon notice and opportunity for hearing as provided in subsection (f) of this section, the commissioner may for each violation of this chapter fine any broker-dealer, agent, investment adviser, or representative not to exceed:

(1) Ten thousand dollars (\$10,000) or an amount equal to the total amount of money received in connection with each separate violation; or

(2) If a victim of a violation is sixty-five (65) years of age or older:

(A) Twenty thousand dollars (\$20,000) for each violation; or

(B) Two (2) times the amount of money received in connection with each violation.

(h) Nothing in this section shall prohibit or restrict the informal disposition of a proceeding or allegations which might give rise to a proceeding by stipulation, settlement, consent, or default, in lieu of a formal or informal hearing on the allegations or in lieu of the sanctions authorized by this section.

**History.** Acts 1959, No. 254, § 6; 1961, No. 248, § 4; 1983, No. 836, §§ 10-12; A.S.A. 1947, § 67-1240; Acts 1995, No. 845, § 19; 2009, No. 534, §§ 9, 10; 2011, No. 339, §§ 6, 7; 2013, No. 460, §§ 11, 12.

**A.C.R.C. Notes.** The 2013 amendment omitted “for registration” following “or applicant” in the introductory language of (d) without striking through the language

to indicate its repeal.

**Amendments.** The 2013 amendment added (a)(2)(F)(i)(g); in (d), inserted “may by summary order cancel a registration or application if he or she” and added subdivision designations; and deleted “then the commissioner may by order cancel the registration or application for registration” from the end of (d)(3).

**SUBCHAPTER 5 — REGULATION OF TRANSACTIONS**

## SECTION.

23-42-504. Exempted transactions.

23-42-509. Covered securities.

**23-42-504. Exempted transactions.**

(a) The following transactions are exempted from §§ 23-42-501 and 23-42-502:

(1) Any isolated nonissuer transactions, whether effected through a broker-dealer or not, provided that repeated or successive transactions shall be prima facie evidence that the transactions are not isolated nonissuer transactions;

(2) Any nonissuer transaction by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety (90) days, provided at the time of the transaction:

(A) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;

(B) The security is sold at a price reasonably related to the current market price of the security;

(C) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

(D) A nationally recognized securities manual designated by rule or order of the commissioner or a document filed with the Securities and Exchange Commission that is publicly available through the Securities and Exchange Commission's Electronic Data Gathering, Analysis, and Retrieval System and contains:

(i) A description of the business and operations of the issuer;

(ii) The names of the issuer's officers and directors, if any, or, in the case of an issuer not domiciled in the United States, the corporate equivalents of such persons in the issuer's country of domicile;

(iii) An audited balance sheet of the issuer as of a date within eighteen (18) months or, in the case of a reorganization or merger when the parties to the reorganization or merger had such audited balance sheets, a pro forma balance sheet; and

(iv) An audited income statement for each of the issuer's immediately preceding two (2) fiscal years, or for the period of existence of the issuer, if in existence for less than two (2) years, or, in the case of a reorganization or merger when the parties to the reorganization or merger had such audited income statements, a pro forma income statement; and



(E) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as it existed on January 1, 2011, unless:

(i) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., as it existed on January 1, 2011;

(ii) The issuer and predecessors of the issuer of the security have been engaged in continuous business for at least three (3) years; or

(iii) The issuer of the security has total assets of at least two million dollars (\$2,000,000) based on:

(a) An audited balance sheet dated within the past eighteen (18) months; or

(b) In the case of a reorganization or merger of parties with audited balance sheets dated within the past eighteen (18) months showing total assets of at least two million dollars (\$2,000,000), a pro forma balance sheet;

(3) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(4) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(5) Any transactions by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(6) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;

(7) A transaction by a person exempted from registration under § 23-42-102(3)(B)(v) if the transaction would be lawful in the place of residence of the offeree or purchaser had it occurred there instead of in this state;

(8) Any offer or sale:

(A) By an issuer to a person in a state other than this state if that offer or sale would be lawful if made in the other state; or

(B) To a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity. The Securities Commissioner may by order, upon petition by any person, determine if the petitioner may be deemed, upon the basis of knowledge, experience, volume, and number of transactions, and other securities background, an "institutional buyer" for purposes of this subdivision (a)(8);

(9)(A) Any transaction pursuant to an offer and sale to not more than thirty-five (35) purchasers other than those designated in subdivision (a)(8) of this section during any period of twelve (12) consecutive months, if:

(i) The seller reasonably believes that all the buyers are purchasing for investment; and

(ii) No commission or other remuneration shall be paid or given directly or indirectly for soliciting any prospective buyer in this state unless the person receiving any such commission or remuneration is registered pursuant to § 23-42-301.

(B) However, the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of purchasers permitted, or waive the conditions in subdivisions (a)(9)(A)(i) and (ii) of this section with or without the substitution of a limitation on remuneration;

(10) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities or warrants, if no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this state, unless the commissioner shall, upon written application, permit the payment of a commission or other remuneration with or without the substitution of a limitation on remuneration;

(11) Any offer, but not a sale, of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act;

(12) Any other transaction which the commissioner by rule or order exempts as not being necessary or appropriate in the public interest for the protection of investors.

(b)(1) Before any transaction shall be executed as an exempted transaction under subdivision (a)(9) or subdivision (a)(10) of this section, except, in the case of dividend reinvestment and stock purchase programs pursuant to subdivision (a)(10) of this section, a proof of exemption must first be filed with the commissioner and the commissioner by order shall not have disallowed the exemption within the next ten (10) full business days. Before any dividend reinvestment and stock purchase program shall be executed as an exempt transaction under subdivision (a)(10) of this section, an initial proof of exemption shall be filed. Thereafter, in every fifth year a proof of exemption must be filed with the commissioner, and the commissioner by order must not have disallowed the exemption within the next ten (10) full business days.

(2) The proof of exemption shall contain a statement of the grounds upon which the exemption is claimed and a designation of the subsection of this section under which the exemption is claimed.

(3) Proofs of exemption which have not been completed within a period of one hundred eighty (180) days after filing with the commissioner may be deemed abandoned and considered withdrawn by the applicant, provided the applicant has been notified of the deficiencies to the proof and afforded a reasonable opportunity to correct such deficiencies.



(4)(A) For every proof of exemption filed with the commissioner under subdivision (a)(9) of this section, there shall be paid to the commissioner a filing fee of one-tenth percent (0.1%) of the maximum aggregate offering price at which the securities are to be offered in this state, but the fee shall in no case be less than twenty-five dollars (\$25.00) or more than five hundred dollars (\$500).

(B) For every proof of exemption filed with the commissioner under subdivision (a)(10) of this section, there shall be paid to the commissioner a filing fee of fifty dollars (\$50.00).

(C) The commissioner shall have authority under this subsection to amend or rescind the filing fees by rule or order if the commissioner determines that the fee is excessive under the circumstances.

**History.** Acts 1959, No. 254, § 14; 1961, No. 248, § 7; 1963, No. 512, § 1; 1971, No. 131, § 4; 1973, No. 47, §§ 13, 15; 1975, No. 844, §§ 9, 10, 12; 1977, No. 493, § 8; 1983, No. 836, §§ 20, 25; 1985, No. 610, § 1; 1985, No. 939, § 8; A.S.A. 1947, § 67-1248; Acts 1995, No. 845, § 27; 1997, No. 173, § 21; 1999, No. 363, § 3; 2005, No. 420, § 3; 2009, No. 462, § 12; 2011, No. 339, § 14; 2013, No. 460, § 13.

**Amendments.** The 2013 amendment, in (a)(7), substituted "A transaction" for "Any transaction" and "if the transaction" for "provided that the transaction."

### 23-42-509. Covered securities.

(a) The Securities Commissioner, by rule or order, may require a notice filing consisting of any or all of the following documents with respect to a covered security under section 18(b)(2) of the Securities Act of 1933:

(1)(A) Prior to the initial offering of such a covered security in this state, all documents that are part of a current federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, together with a consent to service of process signed by the issuer and with a fee in the amount of one-tenth percent (0.1%) of the maximum aggregate offering price at which the covered securities are to be offered in this state, but the fee shall in no case be less than one hundred fifty dollars (\$150) nor more than two thousand dollars (\$2,000). Any portion of the fee in excess of one thousand dollars (\$1,000) shall be designated as special revenues and shall be deposited into the Securities Department Fund. When a notice filing is withdrawn before the effective date, the commissioner shall retain one hundred fifty dollars (\$150) of the filing fee.

(B) Sales of the covered securities in excess of the amount of covered securities to have been offered in this state shall require the person making the notice filing to pay a fee, calculated in the manner specified in subdivision (a)(1)(A) of this section, for all securities sold. In addition, if the sales are in excess of one hundred five percent (105%) of the amount to have been offered, the person making the notice filing shall pay a penalty fee of two hundred dollars (\$200).

(C) The initial notice filing of an investment company, as defined in the Investment Company Act of 1940, shall be effective for a period commencing upon the commissioner's receipt of the notice filing, or, if

not yet effective with the Securities and Exchange Commission, concurrently with the Securities and Exchange Commission effectiveness, and ending two (2) months after the investment company's fiscal year end. Thereafter, the investment company must renew the notice filing by submitting the appropriate forms and documents as filed with the Securities and Exchange Commission, along with the appropriate fee, calculated in the manner specified in subdivision (a)(1) of this section, with respect to the additional securities proposed to be offered, within two (2) months after the expiration of the registrant's fiscal year end.

(D) The notice filing of a unit investment trust, as defined in the Investment Company Act of 1940, shall be effective for one (1) year from the date of effectiveness granted by the Securities and Exchange Commission;

(2) After the initial offer of such covered securities in this state, all documents that are part of an amendment to a current federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933;

(3) An annual or periodic report of the value of the covered securities offered or sold in this state as necessary to compute fees.

(b) A notice filing relating to a covered security may be amended after its effective date so as to increase the securities specified as proposed to be offered. The amendment becomes effective upon receipt by the commissioner. Every person filing such an amendment shall pay a filing fee, calculated in the manner specified in subdivision (a)(1) of this section, with respect to the additional securities proposed to be offered.

(c)(1) With respect to a covered security under section 18(b)(4)(E) of the Securities Act of 1933, the commissioner may by rule or order require that no later than fifteen (15) days after the first sale of a covered security, the issuer:

(A) File a notice on United States Securities and Exchange Commission Form D;

(B) Submit a consent to service of process signed by the issuer; and

(C)(i) Pay a fee in the amount of one-tenth percent (0.1%) of the maximum aggregate offering price at which the securities are to be offered in this state.

(ii) The fee shall be at least one hundred dollars (\$100) and no more than five hundred dollars (\$500).

(2) After the initial offer of the covered security in this state, any amendment to United States Securities and Exchange Commission Form D filed with the Securities and Exchange Commission under the Securities Act of 1933 shall be filed concurrently with the commissioner.

(3) Unless an issuer conducts a continuous offering and files concurrent amendments as required by subdivision (c)(2) of this section, an offering under subdivision (c)(1) of this section is effective for twelve (12) months from the date of the filing.

(d) With respect to a covered security under section 18(b)(4)(C) of the Securities Act of 1933, if the issuer's principal place of business is



located in this state or purchasers of fifty percent (50%) or greater of the aggregate amount of the offering are residents of this state, the commissioner may by rule or order require the issuer to:

(1) File concurrently with the commissioner the information required to be filed with the United States Securities and Exchange Commission under section 4A(b) of the Securities Act of 1933; and

(2)(A) Except as provided in subdivision (d)(2)(B) of this section, pay a fee in the amount of one-tenth percent (0.1%) of the maximum aggregate offering price at which the securities are to be offered in this state.

(B) The fee shall be at least one hundred dollars (\$100) and no more than five hundred dollars (\$500).

(e) In addition to a filing required by subsection (c) or subsection (d) of this section, the commissioner may by rule or order require:

(1) The concurrent filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933 concerning a covered security under section 18(b)(3) or section 18(b)(4) of the Securities Act of 1933 as it existed on January 1, 2013; and

(2) A fee of one hundred dollars (\$100) for the filing.

(f) The commissioner may issue a stop order suspending the offer and sale of a covered security, except a covered security under section 18(b)(1) of the Securities Act of 1933, if he or she finds that:

(1) The order is in the public interest; and

(2) A failure to comply with this section exists.

(g) The commissioner by rule or order may waive any or all of the provisions of this section.

**History.** Acts 1997, No. 173, § 23; 1999, No. 363, § 4; 2013, No. 460, § 14.

**Amendments.** The 2013 amendment rewrote (c) and (d); added (e) and redesignated the remaining subsections accord-

ingly; and, in (f)(2), substituted "A" for "There is a" and "this section exists" for "any condition established under this section."

## CHAPTER 48

### ORGANIZATION AND OPERATION

#### SUBCHAPTER.

#### 8. CUSTOMER-BANK COMMUNICATION TERMINALS.

#### SUBCHAPTER 8 — CUSTOMER-BANK COMMUNICATION TERMINALS

#### SECTION.

#### 23-48-810. Sharing of communication terminals.

**Effective Dates.** Acts 2013, No. 153, § 2: Feb. 26, 2013. Emergency clause provided: "It is found and determined by the

General Assembly of the State of Arkansas that out-of-state banks have and will have an unfair competitive advantage

over Arkansas banks located out-of-state that are subject to the state's terminal usage fee limits; that out of state banks will continue to have an unfair competitive advantage over Arkansas banks located out of state until the limitation is removed; and that this act is immediately necessary to remove the limitation to allow Arkansas banks located out of state to change their rates to the maximum usage fee authorized by the state where the Arkansas bank is located. Therefore, an

emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

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### 23-48-810. Sharing of communication terminals.

(a)(1) An agreement to share a customer-bank communication terminal, as defined by § 23-48-801, shall not prohibit, limit, or restrict the right of a bank from charging a customer-bank communication terminal usage fee.

(2) The usage fee:

(A)(i) Shall not exceed two dollars (\$2.00) or two percent (2%) of the gross amount of the transaction, whichever is less.

(ii) However, an Arkansas state bank may charge the maximum usage fee at customer-bank communication terminals authorized by law in the state where the Arkansas state bank operates an out-of-state full-service branch and customer-bank communication terminals; and

(B) May be imposed only if imposition of the usage fee is disclosed at a time and in a manner that allows a user to terminate or cancel the transaction without incurring the usage fee.

(b)(1) For purposes of this section, "usage fee" is a fee charged by a customer-bank communication terminal owner on transactions by a holder of a foreign bank card.

(2) For purposes of this section, a "foreign bank card" is a card eligible for use in a customer-bank communication terminal, which card is not issued by the customer-bank communication terminal owner.

**History.** Acts 1997, No. 89, § 1; 2013, No. 153, § 1.

**Amendments.** The 2013 amendment,

in (a)(2), added subdivision designations, added (a)(2)(ii), added "usage" before first use of "fee", and made stylistic changes..



## CHAPTER 55

# UNIFORM MONEY SERVICES ACT

### ARTICLE.

1. GENERAL PROVISIONS
  2. MONEY TRANSMISSION LICENSES
  6. EXAMINATIONS — REPORTS — RECORDS
  7. PERMISSIBLE INVESTMENTS
  10. MISCELLANEOUS PROVISIONS
- 

**A.C.R.C. Notes.** Amendments to this chapter by Acts 2009, No. 486, Acts 2011, No. 733, and Acts 2013, No. 531, were not derived from an official revision of the

Uniform Money Services Act by the National Conference of Commissioners on Uniform State Laws.

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## ARTICLE 1

### GENERAL PROVISIONS

### SECTION.

- 23-55-102. Definitions.  
23-55-103. Exclusions.

### 23-55-102. Definitions.

In this chapter:

(1) “Applicant” means a person that files an application for a license under this chapter.

(2) “Authorized delegate” means a person a licensee designates to provide money services on behalf of the licensee.

(3) “Bank” means an institution organized under federal or state law which:

(A) accepts demand deposits or deposits that the depositor may use for payment to third parties and engages in the business of making commercial loans; or

(B) engages in credit card operations and maintains only one office that accepts deposits, does not accept demand deposits or deposits that the depositor may use for payments to third parties, does not accept a savings or time deposit less than \$100,000, and does not engage in the business of making commercial loans.

(4) “Commissioner” means the Securities Commissioner.

(5) “Control” means:

(A) ownership of, or the power to vote, directly or indirectly, at least 25 percent of a class of voting securities or voting interests of a licensee or person in control of a licensee;

(B) power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or person in control of a licensee; or

(C) the power to exercise directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.

(6) "Currency exchange" means receipt of revenues from the exchange of money of one government for money of another government.

(7) "Executive officer" means a president, chairperson of the executive committee, chief financial officer, responsible individual, or other individual who performs similar functions.

(8) "Licensee" means a person licensed under this chapter.

(9) "Monetary value" means a medium of exchange, whether or not redeemable in money.

(10) "Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

(11) "Money services" means money transmission or currency exchange.

(12)(A) "Money transmission" means selling or issuing payment instruments, stored value, or receiving money or monetary value for transmission.

(B) "Money transmission" does not include providing delivery services such as courier or package delivery services or acting as a mere conduit for the transmission of data.

(13) "Outstanding," with respect to a payment instrument, means issued or sold by or for the licensee and reported as sold but not yet paid by or for the licensee.

(14) "Payment instrument" means a check, draft, money order, traveler's check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

(15) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

(16) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(17) "Responsible individual" means an individual who is employed by a licensee and has principal managerial authority over the provision of money services by the licensee in this State.

(18) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(19) "Stored value" means monetary value that is evidenced by an electronic record.

(20) "Unsafe or unsound practice" means a practice or conduct by a person licensed to engage in money transmission or an authorized



delegate of such a person which creates the likelihood of material loss, insolvency, or dissipation of the licensee's assets, or otherwise materially prejudices the interests of its customers.

(21) "Prepaid access" means access to funds or the value of funds that have been paid in advance that can be retrieved or transferred in the future through an electronic device or vehicle, including without limitation a card, code, electronic serial number, mobile identification number, or personal identification number.

**History.** Acts 2007, No. 1595, § 1; **Amendments.** The 2013 amendment 2009, No. 486, §§ 1 – 3; 2011, No. 733, added (21).  
§ 1; 2013, No. 531, § 1.

### 23-55-103. Exclusions.

This chapter does not apply to:

(1) the United States or a department, agency, or instrumentality thereof;

(2) money transmission by the United States Postal Service or by a contractor on behalf of the United States Postal Service;

(3) a state, county, city, or any other governmental agency or governmental subdivision of a State;

(4) a bank, bank holding company, office of an international banking corporation, branch of a foreign bank, corporation organized pursuant to the Bank Service Company Act, 12 U.S.C. §§ 1861-1867 (Supp. V 1999), or corporation organized under the Edge Act, 12 U.S.C. §§ 611-633 (1994 & Supp. V 1999) under the laws of a State or the United States if it does not issue, sell, or provide payment instruments, stored value, or prepaid access through an authorized delegate that is not such a person;

(5) electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or a State or governmental subdivision, agency, or instrumentality thereof;

(6) a board of trade designated as a contract market under the federal Commodity Exchange Act, 7 U.S.C. §§ 1-25 (1994), or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for such a board;

(7) a registered futures commission merchant under the federal commodities laws to the extent of its operation as such a merchant;

(8) a person that provides clearance or settlement services pursuant to a registration as a clearing agency or an exemption from such registration granted under the federal securities laws to the extent of its operation as such a provider;

(9) an operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, auto-

mated clearing house transfers, similar funds transfers, or prepaid access;

(10) a person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as such a broker-dealer; or

(11) a credit union regulated and insured by the National Credit Union Administration.

**History.** Acts 2007, No. 1595, § 1; 2013, No. 531, §§ 2, 3.

**Amendments.** The 2013 amendment, in (4), substituted “Bank Service Com-

pany Act” for “Bank Service Corporation Act” and “stored value, or prepaid access” for “or stored value; and added “or prepaid access” at the end of (9).

## ARTICLE 2

### MONEY TRANSMISSION LICENSES

SECTION.

23-55-202. Application for license.  
23-55-204. Security.

SECTION.

23-55-206. Renewal of license.

#### 23-55-202. Application for license.

(a) In this section, “material litigation” means litigation that according to generally accepted accounting principles is significant to an applicant’s or a licensee’s financial health and would be required to be disclosed in the applicant’s or licensee’s annual audited financial statements, report to shareholders, or similar records.

(b) A person applying for a license under this article shall do so in a form and in a medium prescribed by the commissioner. The application must state or contain:

(1) the legal name and residential and business addresses of the applicant and any fictitious or trade name used by the applicant in conducting its business;

(2) a list of any criminal convictions of the applicant and any material litigation in which the applicant has been involved in the 10-year period next preceding the submission of the application;

(3) a description of any money services previously provided by the applicant and the money services that the applicant seeks to provide in this State;

(4) a list of the applicant’s proposed authorized delegates and the locations in this State where the applicant and its authorized delegates propose to engage in money transmission or provide other money services;

(5) a list of other States in which the applicant is licensed to engage in money transmission or provide other money services and any license revocations, suspensions, or other disciplinary action taken against the applicant in another State;

(6) information concerning any bankruptcy or receivership proceedings affecting the licensee;



(7) a sample form of contract for authorized delegates, if applicable, and a sample form of payment instrument or instrument upon which stored value or prepaid access is recorded, if applicable;

(8) the name and address of any bank through which the applicant's payment instruments, stored value, or prepaid access will be paid;

(9) a description of the source of money and credit to be used by the applicant to provide money services; and

(10) any other information the commissioner reasonably requires with respect to the applicant.

(c) If an applicant is a corporation, limited liability company, partnership, or other entity, the applicant shall also provide:

(1) the date of the applicant's incorporation or formation and State or country of incorporation or formation;

(2) if applicable, a certificate of good standing from the State or country in which the applicant is incorporated or formed;

(3) a brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded;

(4) the legal name, any fictitious or trade name, all business and residential addresses, and the employment, in the 10-year period next preceding the submission of the application of each executive officer, manager, director, or person that has control, of the applicant;

(5) a list of any criminal convictions and material litigation in which any executive officer, manager, director, or person in control of, the applicant has been involved in the 10-year period next preceding the submission of the application;

(6) a copy of the applicant's audited financial statements for the most recent fiscal year and, if available, for the two-year period next preceding the submission of the application;

(7) a copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period next preceding the submission of the application;

(8) if the applicant is publicly traded, a copy of the most recent report filed with the United States Securities and Exchange Commission under § 13 of the federal Securities Exchange Act of 1934, 15 U.S.C. § 78m (1994 & Supp. V 1999);

(9) evidence of the applicant's registration or qualification to do business in this state;

(10) if the applicant is a wholly owned subsidiary of:

(A) a corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under § 13 of the federal Securities Exchange Act of 1934, 15 U.S.C. § 78m (1994 & Supp. V 1999); or

(B) a corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States;

(11) if the applicant has a registered agent in this State, the name and address of the applicant's registered agent in this State; and

(12) any other information the commissioner reasonably requires with respect to the applicant.

(d) A nonrefundable application fee of \$1,500 and a license fee of \$750 must accompany an application for a license under this article. The license fee must be refunded if the application is denied.

(e) The commissioner may waive one or more requirements of subsections (b) and (c) or permit an applicant to submit other information in lieu of the required information.

(f) The application shall be accompanied by the surety bond required by § 23-55-204.

**History.** Acts 2007, No. 1595, § 1; 2009, No. 486, §§ 6, 7; 2013, No. 531, § 4. **Amendments.** The 2013 amendment inserted “or prepaid access” in (7) and (8).

### 23-55-204. Security.

(a) Except as otherwise provided in subsection (b), a surety bond in the amount of \$50,000 plus \$10,000 per location in this State where the applicant and its authorized delegates engage in money transmission or provide other money services, with the maximum required amount of the surety bond of \$300,000, must accompany an application for a license to engage in money services.

(b) The surety bond must be in a form satisfactory to the Securities Commissioner and payable to the State for the benefit of any claimant against the licensee to secure the faithful performance of the obligations of the licensee with respect to money transmission.

(c) The aggregate liability on a surety bond may not exceed the principal sum of the bond. A claimant against a licensee may maintain an action on the bond, or the commissioner may maintain an action on behalf of the claimant.

(d) A surety bond must cover claims for so long as the commissioner specifies, but for at least five years after the licensee ceases to provide money services in this State. However, the commissioner may permit the amount of security to be reduced or eliminated before the expiration of that time to the extent the amount of the licensee’s payment instruments or stored-value and prepaid access obligations outstanding in this State is reduced.

(e) [Repealed.]

(f) The commissioner may increase the amount of security required to a maximum of \$1,000,000 if the financial condition of a licensee so requires, as evidenced by reduction of net worth, financial losses, or other relevant criteria.

**History.** Acts 2007, No. 1595, § 1; 2009, No. 486, § 9; 2011, No. 733, § 4; 2013, No. 531, § 5. **Amendments.** The 2013 amendment inserted “and prepaid access” in the second sentence of (d).



**23-55-206. Renewal of license.**

(a) A licensee under this article shall pay an annual renewal fee of \$750 no later than December 1 for the succeeding calendar year or, if December 1 is not a business day, on the next business day.

(b) A licensee under this article shall submit a renewal report with the renewal fee, in a form prescribed by the commissioner. The renewal report must state or contain:

(1) the number and monetary amount of payment instruments, stored-value, and prepaid access sold by the licensee in this State which have not been included in a renewal report and the monetary amount of payment instruments, stored value, and prepaid access currently outstanding;

(2) a description of each material change in information submitted by the licensee in its original license application which has not been reported to the commissioner on any required report;

(3) a list of the licensee's permissible investments and a certification that the licensee continues to maintain permissible investments according to the requirements set forth in §§ 23-55-701 and 23-55-702; and

(4) proof that the licensee continues to maintain adequate security as required by § 23-55-204.

(c) A licensee that does not comply with subsections (a) and (b) by December 1 shall pay a late fee of \$250 if the complete renewal application is received before the expiration of the license.

(d) The commissioner for good cause may grant an extension of the renewal date.

**History.** Acts 2007, No. 1595, § 1; inserted "and prepaid access" twice in 2011, No. 733, § 6; 2013, No. 531, § 6. (b)(1).

**Amendments.** The 2013 amendment

**ARTICLE 6****EXAMINATIONS — REPORTS — RECORDS****SECTION.**

23-55-605. Records.

**23-55-605. Records.**

(a) A licensee shall maintain the following records for determining its compliance with this chapter for at least three years:

(1) a record of each payment instrument or stored-value or prepaid access obligation sold;

(2) a general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts;

(3) bank statements and bank reconciliation records;

(4) records of outstanding payment instruments and stored-value and prepaid access obligations;

(5) records of each payment instrument and stored-value and prepaid access obligation paid within the three-year period;

(6) a list of the last known names and addresses of all of the licensee's authorized delegates; and

(7) any other records the commissioner reasonably requires by rule.

(b) The items specified in subsection (a) may be maintained photographically, electronically, or in any other form of record allowed by the commissioner.

(c) Records may be maintained outside this State if they are made accessible to the commissioner on seven business-days' notice that is sent in a record.

(d) All records maintained by the licensee as required in subsections (a) through (c) are open to inspection by the commissioner pursuant to § 23-55-601.

**History.** Acts 2007, No. 1595, § 1; inserted "and prepaid access" in (a)(1), 2009, No. 486, § 15; 2013, No. 531, § 7. (a)(4), and (a)(5).

**Amendments.** The 2013 amendment

## ARTICLE 7

### PERMISSIBLE INVESTMENTS

#### SECTION.

23-55-701. Maintenance of permissible investments.

#### **23-55-701. Maintenance of permissible investments.**

(a) A licensee shall maintain at all times permissible investments that have a market value computed in accordance with generally accepted accounting principles of not less than the aggregate amount of all of its outstanding payment instruments and stored value and prepaid access obligations issued or sold in all states and money transmitted from all states by the licensee.

(b) The commissioner, with respect to any licensees, may limit the extent to which a type of investment within a class of permissible investments may be considered a permissible investment, except for money and certificates of deposit issued by a bank. The commissioner by rule may prescribe or by order allow other types of investments that the commissioner determines to have a safety substantially equivalent to other permissible investments.

(c) Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments and stored value and prepaid access obligations in the event of bankruptcy or receivership of the licensee.

**History.** Acts 2007, No. 1595, § 1; inserted "and prepaid access" in (a) and 2013, No. 531, § 8. (c).

**Amendments.** The 2013 amendment



**ARTICLE 10****MISCELLANEOUS PROVISIONS****SECTION.**

23-55-1006. License terms.

**23-55-1006. License terms.**

Effective January 1, 2012:

(1) a license for a money transmission issued or renewed under this chapter shall expire on December 31 of each year unless it is terminated by surrender, abandonment, a change of employment, or order of the commissioner; and

(2) a license for a currency exchange issued or renewed under this chapter shall expire on December 31 every 2 years unless it is terminated by surrender, abandonment, a change of employment, or order of the commissioner.

**History.** Acts 2011, No. 733, § 15; 2013, No. 531, § 9. rewrote the section heading; and deleted (b) and (c).

**Amendments.** The 2013 amendment







